

1987 March 30

(STYLIANIDES, J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ELLI CONSTANTOURI,

*Applicant,*

v.

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

*Respondents.*

*(Case No. 588/84).*

*Customs and Excise Duties—Motor vehicles, importation of by Cypriots—  
Exemption from import duty—Order 188/82 of the Council of Ministers—  
«Reasonable time» from date of arrival—A question of fact—Its evaluation left  
to the discretion of the respondent Director*

5 *Executory act—Informatory/Advisory act—Rejection of application by a  
repatriated Cypriot for the duty free importation of a motor car, which the  
applicant had not imported, but intended to import—The crucial words in  
Order 188/82 are those referring to «Importation»—Sub judice decision lacks  
executory character—It is informative or advisory in nature.*

10 The applicant was born in Cyprus on 9.10.60. On 11.7.63 the whole family  
emigrated to the United States. In February, 1981 they returned to Cyprus. On  
16.10.82 the applicant applied for a duty free importation of a motor car,  
which she intended to buy. Her application was finally turned down on the  
ground that it was not submitted within reasonable time from applicant's  
15 return to Cyprus.

As a result the applicant filed the present recourse.

20 Held, *dismissing the recourse*: (1) In the light of all the material before the  
Court, the conclusion is that it was reasonably open to the respondent  
Director to find that the applicant had come back to Cyprus for settlement in  
February, 1981.

(2) *The question what is «a reasonable time» depends on the circumstances  
and is, therefore, a question of fact. The evaluation of this factor is left to the  
discretion of the respondent Director. In this case it was reasonably open to  
him to conclude that the period from February, 1981 - October, 1982 was  
25 not within the limits of «reasonable time».*

(3) *The crucial words in Order 188/82 are those referring to «importation».  
As in this case the applicant had not imported a car, but she simply intended*

to do so, : sub judge decision is not of an executory nature, but only of  
informatory ( advisory nature.

*Recourse dismissed.  
No order as to costs*

*Cases referre to:*

**5**

*Anastasis v Minister of Finace* (1987) 3 C.L.R. 200.

*HjiYorghii v. Minister of Finace* (1987) 3 C.L.R. 280;

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

*Yiangou v. The Republic* (1987) 3 C L.R. 27;

**Recourse.**

**10**

Recourse against the refusal of the respondents to exempt  
applicant from import duty for a motor car as a repatriated Cypriot.

*A.S. Angelides*, for the applicant.

*M. Photiou*, for the respondent.

*Cur. adv. vult.* **15**

STYLIANIDES J. read the following judgment. The applicant  
by the present recourse challenges the refusal of the respondent to  
exempt her from import duty for a motor-car.

The applicant was born in Cyprus on 9.10.60. On 11.7.63 the  
whole family emigrated to the United States. In February, 1981, **20**  
they returned to Cyprus.

On 11.6.82 the Council of Ministers in virtue of its powers under  
Section 11(2) of the Customs & Excise Duties Laws, 1978-1981  
made an Order that was published in the Official Gazette on **25**  
11.6.82 (No. 118, Third Supplement, Part I). Under this Order if a  
Cypriot satisfies the requirements laid down therein is entitled to  
exemption from import duty for one car for each family. The  
requirements are:

- (a) Permanent settlement abroad for at least 10 continuous years;
- (b) Return and permanent establishment in the Republic; and, **30**
- (c) Importation of motor-car within reasonable time from the  
date of arrival.

On 16.10.82 the applicant submitted application for relief under

the said Order in which she stated that she returned to Cyprus on 23rd November, 1981, with the intention of taking up permanent residence in Cyprus. Her such application was rejected on the main ground that the relevant Order was operative only for  
5 Cypriots who returned after the date of the Order

She complained to the Director of the Department of Customs & Excise that the letter dated 6 7 83 communicating such decision to her was not properly addressed as her surname was erroneously written and alleged further that though she came to  
10 Cyprus on 23rd November, 1981, in fact the time she took up permanent residence was 1983 and she applied for re-examination of her case

A further inquiry was carried out and the following facts were established. She returned from the United States on 15 2 81. She  
15 stayed in Cyprus continuously with the exception of 4 days' travel abroad between 10-12 October, 1981, and 21-23 November 1981. On 3 7 82 she celebrated her marriage in Cyprus with a Cypriot civil servant. In May, 1983, she travelled with her husband abroad to the United States and returned in June, 1983

20 On the basis of the relevant facts before him the respondent Director determined that the applicant returned and re-established herself in Cyprus permanently as from 15 2 81. She submitted her application on 16 10 82, that the time that elapsed was not reasonable

25 Having given careful consideration to this case, I have reached the conclusion, in the light of all the material before me, that it was reasonably open to the respondent Director of Customs to find that the applicant had come back to Cyprus to settle here permanently in February, 1981. Her 4 days' absence travel  
30 abroad in October and November, 1981, and her travel with her husband in 1983 cannot in any way be treated as preventing the respondent from reaching the conclusion he did

She submitted her application on 16 10 82, some 20 months after her permanent settlement in Cyprus. She complains against  
35 the decision of the Director that such application was not made within reasonable time from arrival

In *Philippos Michael v The Republic*, Case No 552/84,

judgment delivered on 21.11.86, not yet reported\*, I said:-

«Where anything, is limited to be done within a «reasonable time», the question what is a reasonable time must necessarily depend on the circumstances, and is, therefore, a question of fact». - (Halsbury's Laws of England, 4th Ed., Volume 45, page 552, paragraph 1147; *Yiangou and Another v. The Republic*, (1976) 3 C.L.R. 101).

5

The evaluation of the factor of «reasonable time» between the return to Cyprus and the claim for relief for the importation of a motor-car is left by the provisions of Order 188/82 to the discretion of the Director of Customs.

10

I am of the view that it was reasonably open to the Director of Customs to find that the period from February, 1981-October, 1982 was not within the limits of reasonable time after applicant's return to Cyprus.

15

This case will be ultimately dismissed.

In a recent decision of the Full Bench in Revisional Appeal No.617 - *Yiangou v. The Republic* - in which judgment was delivered on the 20th January, 1987\*\*, where the facts were identical with the present case, it was held that the decision of the respondent Director for relief from import duty for a car intended to be purchased in the future was not an executory act amenable to the jurisdiction of this Court under Article 146 but only of informatory or advisory nature.

20

The crucial words in the Order of the Council of Ministers are clearly those referring to the «importation» of the motor-car in question and cannot in any way be construed as extending to intended future importation of goods. The definition of the word «import» in Section 2 of the Law applies to the same word used in the Order - (See, also, *Charalambos Anastasis v. Minister of Finance through the Department of Customs & Excise*, Case No. 316/85, decision delivered on 17.2.87\*\*\*, and *Georghios K. Hji-Yorghi v. The Minister of Finance through the Customs Department*, Case No.3/83, decision delivered on 18.3.87).\*\*\*\*

25

30

\* Reported in (1986) 3 C.L.R. 2067.

\*\* Reported in (1987) 3 C.L.R. 27.

\*\*\* Reported in (1987) 3 C.L.R. 200

\*\*\*\* Reported in (1987) 3 C.L.R. 280

For all the aforesaid reasons the recourse is hereby dismissed and the sub-judice decision is confirmed.

In all the circumstances I make no order as to costs.

5

*Recourse dismissed.  
No order as to costs.*