1988 December 2

[A. LOIZOU P., DEMETRIADES, PAPADOPOULOS, HADJITSANGARIS, CHRYSOSTOMIS, NIKITAS, ARTEMIDES, JJ]

CHRISTOFOROS CONSTANTINIDES,

*Appellant - Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF FINANCE,
2. THE DIRECTOR OF CUSTOMS & EXCISE,

*Respondents.*

*(Revisional Jurisdiction Appeal No. 572).*

*Customs and Excise Duties—Motor vehicles, duty free importation of by Cypriots—Order 188/82 of the Council of Ministers—Permanent settlement—Residence in a foreign country as a student, however long, does not amount to permanent settlement—Fact that applicant's visa stated that he might work during the summer does not change the nature of his residence as a student allowed by the foreign country.*

*General principles of administrative law—Determination of facts by administration/Determination of the merits of the case by administration—Judicial control—Court does not interfere, unless the administration acted under a misconception of fact or exceeded the outer limits of its discretion.*

*Domicile or residence—Evidence by applicant adding a subjective element to the facts before the administration—Though material, it must be examined in the context of the surrounding circumstances—The animus is not conclusively established thereby—Especially when the statements are made ex post facto.*

In this case and on the basis of the totality of the material placed before the administration, the Court reached the conclusion that the sub judice decision was reasonably open to the administration. The legal principles derived from this judgment are summarised in the notes hereinabove.

*Appeal dismissed.*
*No order as to costs.*

*Cases referred to:*

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

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

*Ttofis v. The Republic* (1988) 3 C.L.R. 1625;

*Lakatamitis v. The Republic* (1988) 3 C.L.R. 1565.

## Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Kourris, J.) given on the 21st March, 1986 (Revisional Jurisdiction Case No. 473/85)* whereby appellant's recourse against the refusal of the respondent to grant applicant a licence to import a duty - free motor vehicle was dismissed.

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

*D. Papadopoulou (Mrs.),* for the respondents.

*Cur. adv. vult.*

A. LOIZOU P. read the following judgment of the Court. This is an appeal from the judgment of a Judge of this Court by which he upheld the decision of the respondents with which they refused to the applicant the importation of a motor-vehicle free of import duty as not coming within the ambit of sub-heading 19 of item 0.1 of the 4th Schedule to the Customs and Excise Duties Law 1978, (Law No. 18 of 1978).

The determination of the issues raised in this appeal turn on the evaluation of the facts that were before the appropriate administra-

* *(Reported in (1986) 3 C.L.R. 822).*

tive organ, the second respondent in this appeal, as regards the meaning and effect of the term "permanent settlement" (μόνιμος εγκατάσταση).

The facts placed by the applicant before the second respondent as contained in his application which is in a printed form filled in by him are briefly these: The applicant left Cyprus at the age of 17 with a very small amount of money and went to the Federal Republic of Germany in October 1967, as a visitor to explore the possibilities whether he could work and study at the same time. During the first few months he tried to learn the German language and in March 1968, he passed the entrance examinations for the University.

On the 8th May, 1968, he was issued for the first time with a student's visa, that is, his temporary visitor's residence was turned into one of a student's residence, that is, his residence in that country was depended on his status as a student. Admittedly in that visa, as it is shown on his passport, of that period it was stated that he might work during the summer, obviously for the purpose of earning the means of his support or at least, part of it but this concession does not change the nature of the residence allowed to him by the German authorirties.

The applicant studied Medicine the course of which consisted of elevent semesters. Upon their completion a student has to take the final examinations of the University for the purpose of obtaining the Diploma of Medicine. He, in fact, completed his eleven semesters in the summer of 1973 and in December 1974, he sat for the final examinations and he qualified as a Doctor.

In his application, to which we have already referred, after filling in the various questions and stating that he settled permanently abroad, that is, in the Federal Republic of Germany, on the 21st October 1967 he answered the question in the column of "Employment abroad" as starting in January 1975 giving his profession or occupation as that of a Doctor and that he went on being so employed until the 31st March 1984. Furthermore, and it

may usefully be noted here, in the column about the periods of "Stay in Cyprus" since he emigrated abroad, he gives six periods of holidays in Cyprus between the 15th December 1975 to the 25th of March 1987, ranging between 14 to 24 days each time.

The question of "permanent settlement", a crucial element in the relevant Order 0.1.19 has been considered judicially in a number of cases and we shall refer to some of them. They are, inter alia, *Matsas v. The Republic* (1985) 3 C.L.R. 54, *Michael v. The Republic* (1986) 3 C.L.R. 2067 and the more recent ones that of *Andreas Ttofis v. The Republic*, (1988) 3 C.L.R. 1625 and *Demetrios Lakatamitis v. The Republic* (1988) 3 C.L.R. 1565. In all it has been consistently held that residence in a country as a student for educational purposes however long does not amount to permanent settlement.

Moreover in a recourse under Article 146 of our Constitution, the annulment directed against the administration's determination of the facts or questioning the determination on the merits is according to the general principles of Administrative Law that this Court will reject such a ground except where the administration has acted under a misconception of fact or has exceeded the extreme limits of its discretionary power.

We have considered the totality of the circumstances that were placed before the administration by the applicant himself and we have come to the conclusion that the decision reached by the respondents was reasonably open to them and that the applicant has failed to establish that they have either acted under a misconception of fact or have exceeded the extreme limits of their discretionary powers. We may as well point out here that the applicant's testimony before the Court, added to the material before the respondents only a subjective element, but such element, though material in determining such matters as domicile or residence, it has to be examined in the context of all surrounding circumstances and not to be taken as conclusively establishing the animus of the person concerned and especially when such statements are made so ex post facto and, indeed, long thereafter.

For all the above reasons, the appeal is dismissed but in the circumstances there will be no order as to costs.

*Appeal dismissed.*
*No order as to costs.*