

(1988)

1988 December 14

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

STYLLIS CHRISTOU,

Applicant,

v.

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

Respondents.

(Case No. 229/87).

Customs and Excise Duties—Motor vehicles, duty free importation of by Cypriots—Order 188/82 of the Council of Ministers—"Permanent settlement"—Meaning—Ten years continuous stay abroad does not automatically qualify the stayer to the benefit of the order—Stay in a country, where foreigners are not permitted to own immovable property or become its nationals—Applicant owned property in Cyprus, his children were settled here and both he and his wife paid periodic visits to Cyprus—Reasonably open to respondent to conclude that the prerequisite of permanent settlement abroad was not satisfied.

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Executory act—Customs and Excise Duties—Motor vehicles, duty free importation of by Cypriots—Order 188/82 of the Council of Ministers—Views expressed in response to an application for an intended importation—Not executory, but informative in nature.

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The facts of this case sufficiently appear from the judgment of the Court.

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Recourse dismissed.

No order as to costs.

Cases referred to:

Ioannou v. The Republic (1986) 3 C.L.R. 1263;

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

Solomonides v. The Republic (1986) 3 C.L.R. 1025;

5 *Katsoûra v. The Republic* (1986) 3 C.L.R. 1051;

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

Mavronichis v. The Republic (1985) 3 C.L.R. 2301;

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

Recourse.

10 Recourse against the decision of the respondents refusing applicant's application for the importation of a duty free car as a repatriated Cypriot.

St. Panayides, for the applicant.

D. Papadopoulou (Mrs.), for the respondent.

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Cur. adv. vult.

20 PIKIS J. read the following judgment. This is yet another recourse for the review of a decision of the Customs Authorities refusing an application for the importation of a duty-free car made on grounds of repatriation following permanent settlement
25 abroad. The refusal rested on a finding that the applicant did not satisfy the requirements of the law, namely by Notification 188/82 issued under s.11(2) of the Customs and Excise Duties Law 1978. His case for permanent settlement abroad was founded on the fact that he stayed at Oman for a period of eleven and a half years, a period that coincided with his employment in that country

by the firm of J. & P. (Overseas) Limited. As acknowledged, the legislation of that country does not permit foreigners either to acquire immovable property or become nationals of that country.

In *Ioannou v. Republic* (1986) 3 C.L.R. 1263, 1266 it was held in the context of interpretation of the provisions of the pertinent order that ten years stay abroad does not automatically qualify the stayer to the right conferred by Order 188/82. Permanent settlement abroad is a separate prerequisite for qualification to the benefit of the order, associated with the presence or absence of an intention to establish his home in the country of residence. The refusal of the Authorities in that case was upheld by the Court for the reason, inter alia, that it was difficult for non natives of that country to contemplate making Saudi Arabia the place of their permanent settlement. Like Saudi Arabia, the naturalisation of foreigners is also barred by Omani legislation. "Permanent settlement connotes," as A. Loizou, J. - as he then was - observed in *Matsas v. Republic* (1985) 3 C.L.R. 54 "the notion of a real or permanent home and should be distinguished from the notion of ordinary residence." The applicant in this case owned property in Cyprus, his children were settled in this country and both he and his wife paid periodic visits to Cyprus throughout their stay in Oman.

Counsel invited the Court to distinguish the case of *Ioannou*, supra, as inapplicable to the facts of the present case and submitted that the refusal of the application was founded on a misconception of the law and the facts of the case. None of the case cited by counsel in his address (See, *Solomonides v. Republic* (1986) 3 C.L.R. 1025; *Katsoura v. Republic* (1986) 3 C.L.R. 1051; *Kyriakos Rossides v. Republic* (1984) 3 C.L.R. 1482; *Michael Mavronichis v. Republic* (1985) 3 C.L.R. 2301) casts a different interpretation or doubts, the concept of permanent settlement, as elicited in the case of *Ioannou*, that ten years stay abroad does not of itself signify conclusively permanent settlement abroad. I am inevitably driven to the conclusion that it was, at the least, reasonably open to the respondents to refuse the application.

Moreover, the recourse must be dismissed for a more fundamental reason still, namely, the absence of a justiciable decision. In *Yiangou v. Republic* (1987) 3 C.L.R. 27 it was decided by the Full Bench of the Supreme Court that the signification of the views of the Customs and Excise Department made in recourse to an application for the intended importation of a vehicle in time to come, does not give rise to an executory decision; it qualifies only as an informatory or advisory act, non justiciable under article 146.1 of the Constitution.

Consequently the recourse of the applicant is, in any event, doomed to failure for lack of jurisdiction to review its subject matter.

The application is dismissed. Let there be no order as to costs.

Recourse dismissed.
No order as to costs.