

1988 December 31

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEODOROS SCHINIS,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE DIRECTOR OF CUSTOMS DEPARTMENT AND  
EXCISE DUTY,  
2. THE MINISTER OF FINANCE,

*Respondents.*

*(Case No. 734/87).*

*Customs and Excise Duties—Motor vehicles, duty free importation of by Cypriots—Order 188/82 of the Council of Ministers—"Permanent settlement" abroad—Review of authorities concerning its meaning—Effect of restrictions imposed on applicant's residence in a foreign country by such country.*

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By means of this recourse the applicant impugns the validity of the refusal to allow him an exemption from import duty in respect of a car under the provisions of Order 188/82 of the Council of Ministers. The sub judice decision was justified on the ground that the applicant did not complete ten continuous years of permanent settlement abroad.

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It must be noted that the applicant had in fact completed ten continuous years of stay abroad and in particular in the U.K., the Emirates and Saudi Arabia. However, his presence in U.K. was subject to yearly time restrictions and co-extensive with the tenure of his employment there. Likewise, his presence in the Emirates and in Saudi Arabia was for a restricted time and for a limited purpose, viz., to work in such countries for as long as his employment lasted, and he had no right to settle permanently in such places.

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Having reviewed the caselaw regarding the notion of "permanent settlement" in Order 188/82 of the Council of Ministers, the Court,

Held dismissing the recourse:

5 Permanent residence is a question of fact and has to be decided having  
 in mind, inter alia, whether the foreign country in which the applicant  
 claims to have permanently settled intended to receive him as a permanently  
 established immigrant, in which case his stay there would be unrestricted,  
 or on a temporary resident basis, whereupon his residence would be subject  
 10 to restrictions, as it is the case with all the countries to which the applicant  
 has worked: The restrictions imposed on applicant's residence in the afore-  
 said countries negative the contention of permanent settlement.

*Recourse dismissed.  
 No order as to costs.*

*Cases referred to:*

- 15 *Matsas v. The Republic* (1985) 3 C.L.R. 54;  
*Mavronichis 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. 1263;  
*Ellina v. The Republic* (1988) 3 C.L.R. 2651.

20 **Recourse.**

Recourse against the decision of the respondent rejecting applicant's application to import a duty free motor vehicle as a repatriated Cypriot.

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

25 *Y. Lazarou*, for the respondents.

*Cur. adv. vult.*

A. LOIZOU P. read the following judgment. By the present recourse the applicant challenges the decision of the respondents to reject his application to import a duty free motor vehicle in accordance with the provisions of sub-heading 19 of item 0.2 of the Fourth Schedule to the Customs and Excise Duties Law 1978 (Law No. 18 of 1978) hereinafter to be referred to as the Law. 5

On the 17th October 1985, the applicant applied to the Director of the Department of Customs, respondent 1, for exemption from import duty of his salloon car under Reg. No. 311V85, on the ground that he was a Cypriot who after permanent settlement abroad for a continuous period of at least ten years, returned to Cyprus in order to settle permanently. 10

As stated by the applicant in his application, he went to the United Kingdom in 1968 to study and he obtained a degree in Electrical Engineering in 1973. He then returned to Cyprus and stayed until March, 1974, when he left for Scotland in order to settle permanently in that country. There he took up employment with the South of Scotland Electricity Board (SSEB). Two years later he left Scotland for the Emirates upon his having been employed by A. and P. Paraskevaides where he stayed until 1981, with his wife who had joined him there immediately after their marriage in 1979. In fact his son was born in Abu Dhabi in 1980. He then went to work in Saudi Arabia and in 1983 he returned to Cyprus in order to settle permanently. 15 20

By letter dated the 4th July 1987, the respondent rejected the application of the applicant on the ground that his absence from Cyprus "did not constitute permanent settlement abroad as provided by Law". 25

It is the case for the applicant that all the prerequisites of the Law and in particular Order 188/82 are satisfied and that the settlement of the applicant and his whole family abroad are an element establishing permanent settlement. 30

The point in issue is whether the applicant had settled perma-

nently for a continuous period of at least ten years before returning to settle permanently in Cyprus as is required by section 11 of the Law and Order 188/82, published in Supplement No. 3 (II) to the Official Gazette of the Republic of the 11th June, 1982 under  
5 Notification 1783, which reads:

"Vehicles ..... imported by Cypriots who after permanent settlement abroad for a continuous period of at least ten years, return, and settle permanently in the Republic, provided that the importation is made within a reasonable time since their arrival according to the discretion of the Director ....."  
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The notion permanent settlement abroad received judicial interpretation inter alia in *Matsas v. The Republic* (1985) 3 C.L.R. 54 at p. 61, I said the following:

"To my mind permanent settlement carries with it the notion of a real or permanent home and should be distinguished from the notion of ordinary residence."  
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The same view was expressed in *Marvonichis v. The Republic* (1985) 3 C.L.R. 2301; *Constantinides v. The Republic* (1986) 3 C.L.R. 822 and *Ioannou v. The Republic* (1986) 3 C.L.R. 1263, where Pikis J. , stated the following at p. 1266:  
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"The question that must be answered is whether ten years stay in a foreign country immediately qualifies the stayer as a permanent settler in that country for the purposes of the Order. I think not. The concept of permanent settlement is not tied to the length of stay but to the element of permanence associated with physical stay."  
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A similar situation arose in the case of *Rebecca Ellina v. The Republic of Cyprus* (1988) 3 C.L.R. 2651 where I said in relation to the decided cases which I reviewed that a relevant consideration in determining what constituted permanent settlement is whether the country in which the person claims to have so settled permanently, has allowed a person to remain therein as a perma-  
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ment resident, or whether such country has granted only a temporary permit under conditions.

The respondents submission is that the applicant could not make United Kingdom his permanent home as his presence there was subject to yearly time restrictions and or was co-extensive with the tenure of his employment. Likewise, his presence in the Emirates and in Saudi Arabia was for a restricted time and for a limited purpose viz. , to work in such countries for as long as his employment lasted, and he had no right to settle permanently in such places. This is clear from his passport, extracts of which were produced, and from the letter which is attached to his counsel's written address as Appendix "E" whereby the applicant was informed that his leave to enter the United Kingdom was due to expire in April 1976.

Permanent residence is a question of fact and has to be decided having in mind, inter alia, whether the foreign country in which the applicant claims to have permanently settled, intended to receive him as a permanently established immigrant in which case his stay there would be unrestricted, or on a temporary resident basis, whereupon his residence would be subject to restrictions, as it is the case with all the countries to which the applicant has worked.

The restrictions which were imposed on the applicant's residence in United Kingdom which needless to say, he left for employment in the Arab countries by another employer, as well as, and particularly so, those imposed for residence in the Emirates and Saudi Arabia, negative the contention that he settled or could have settled permanently in such countries.

For all the above reasons the present recourse should fail and is hereby dismissed. The sub-judice decision is confirmed on the whole. In the circumstances however, there will be no order as to costs.

*Recourse dismissed.  
No order as to costs.*