

1987 February 7

[DEMETRIADES, J]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PETROS NICOLAIDES,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE DIRECTOR OF CUSTOMS AND EXCISE,

Applicant

Respondent

(Case No 148/85)

Recourse for annulment—Abatement—Revocation of the sub judice act—Whether and in what circumstances the recourse is treated as abated

Customs and Excise—Duty free importation of a motor car—Order 188/82—«Reasonable time» within which to submit the application—Circular issued by the Director of Customs and Excise limiting such time to twelve months—Application of circular to the present case where the application was submitted 1 months after arrival of applicant in Cyprus—It resulted to limitation of his discretion, failure to exercise it after considering all the circumstances and failure to carry a due inquiry into the matter

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10 *Administrative Law—Discretion of administration—Circular by the administrative organ limiting its discretion—Application of circular—Effect*

The applicant, who was born in Cyprus in 1913, emigrated to the U K in 1938 where he lived until the 19 4 81, when he returned to and permanently settled down in Cyprus. On the 10 1 83 he applied under Order 188/82 for the importation free of import duty of his motor car. The application was rejected on the ground that it was not submitted «within a reasonable time, i e within 12 months from the date of his arrival in Cyprus». It should be noted that the period of twelve months had been fixed by a circular issued by the respondent as being the «reasonable time» under the said Order. As a result the applicant filed this recourse.

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20 At some stage of the proceedings the respondent revoked the sub judice act and after re-examining the matter issued a new one, once again rejecting applicant's application on the ground that the period of time that elapsed from his arrival until the submission of the application (19 months) could not be considered reasonable.

25 Held, annulling the sub-judice decision (1) The revocation of the sub judice decision did not in the circumstances of this case lead to the abatement of the recourse because there were damaging effects to the applicant, which had not been extinguished by the revocation in question.

(2) The respondent, by fixing the reasonable time generally at twelve months limited his discretion under Order 188/82 and failed to exercise it after taking into

consideration the circumstances of this case and, also, refrained from conducting a due inquiry, especially with regard to the date on which the applicant had formed the intention to settle in Cyprus as well as the circumstances of the delay in importing the car

(3) This Court has no power in these proceedings to consider the validity of the respondent's second decision 5

*Sub judice decision annulled
Costs in favour of applicants*

Cases referred to

- Chrstodoulides v The Republic* (1978) 3 C L R 189,
- Hapeshis v The Republic* (1979) 3 C L R 550, 10
- Kittou v The Republic* (1983) 3 C L R 605,
- Payiatas v The Republic* (1984) 3 C L R 1239,
- Vakis v The Republic* (1985) 3 C L R 534,
- Neocleous v The Republic* (1986) 3 C L R 1981 15

Recourse.

Recourse against the decision of the respondents whereby applicant's application for the importation of a dutyfree second hand car as a repatriated Cypriot was refused

- K Talandes, for the applicant.* 20
- M Photiou, for the respondent*

Cur. adv. vult.

DEMETRIADES J read the following judgment By means of this recourse the applicant prays for the annulment of the decision of the respondent by which his application for the importation into the Republic of a duty-free second hand motor car was refused. 25

The applicant, who was born in Cyprus in 1913, emigrated to the United Kingdom in 1938 where he lived and worked until the 29th April, 1981, when he returned to and permanently settled down in Cyprus Whilst in the United Kingdom he owned a TOYOTA, Celica motor car As the car was needed by his son, who lives in the United Kingdom, he did not, at the time of his arrival here, bring it with him The car was shipped from the United Kingdom and arrived in Cyprus on the 3rd January, 1983 30

After the arrival of the car and on the 10th January, 1983, the applicant submitted an application to the respondent for its clear- 35

rance from the customs, free of import duty, on the ground that he was a repatriated Cypriot.

The application of the applicant was based on the decision of the Council of Ministers, dated the 11th June, 1982, published in Supplement No.III of the Official Gazette of the Republic, under Notification 188, which read:-

10 «Μηχανοκίνητα οχήματα των κλάσεων 87.02.11 και 87.02.19 εισαγόμενα υπό Κυπρίων οι οποίοι κατόπιν μονίμου εγκαταστάσεως εις το εξωτερικόν δια συνεχι-
15 περίοδον τουλάχιστον 10 ετών επανέρχονται και εγκαθίστανται μονίμως εν τη Δημοκρατία νοουμένου ότι η εισαγωγή γίνεται εντός ευλόγου χρονικού διαστήματος από της αφίξεώς των κατά την κρίσιν του Διευθυντού.

20 Νοείται περαιτέρω ότι ο Υπουργός Οικονομικών κέκτηται εξουσίαν όπως παραχωρή ατέλειαν εις Κυπρίους επαναπατρισθέντας προ της 1.1.1982 οι οποίοι δεν πληρούν τους ανωτέρω όρους».

25 («Motor vehicles under Tariff Headings 87.02.11 and 87.02.19 imported by Cypriots who after permanent settlement abroad for a continuous period of at least 10 years return and settle permanently in the Republic provided the importation takes place within a reasonable time from their arrival at the discretion of the Director:

Provided further that the Minister of Finance is empowered to grant relief from import duty to Cypriots repatriated before 1.1.1982 who do not satisfy the above conditions.»)

30 As the claim of the applicant to import his car without paying import duty was rejected by the respondent, on the ground that, according to the standing customs legislation, it was not found possible to accede to his request (see letter of the respondent dated 1st February, 1983), counsel for the applicant wrote a letter to the respondent (dated 10th March, 1983), asking for the reasons why his client's request was refused. By his letter dated the 30th March 1983, the respondent gave his reasons which, according to its contents, are as follows:

«... the main reason for not acceding to your client's request was due to the fact that he failed to submit his

application within a reasonable time, i.e. within 12 (twelve) months from the date of his arrival to Cyprus with the intention to take up permanent residence».

On the 7th April, 1983, the applicant, after paying the customs Authorities the sum of £767.330 with reservation of his rights, cleared his car and proceeded to file the present recourse. 5

In support of this recourse counsel for the applicant based his argument mainly on the ground that the respondent failed to exercise the discretion vested in him by the Order of the Council of Ministers and that instead he felt bound by his own circular which he had issued, the effect of which was to limit the meaning of the words «within a reasonable time» provided in the decision of the Council of Ministers to a period of time not exceeding twelve months. 10

After the filing of the address of counsel for the applicant, counsel for the respondent very fairly advised the respondent that the recourse was very likely to succeed on this ground. As a result, the latter, by letter dated the 7th December, 1983, addressed to the applicant, revoked his previous decision, the subject-matter of this recourse, and at the same time issued a new one, informing the applicant that the period of time that elapsed from the date of his arrival to Cyprus (29th April, 1981) and the date of the importation of his car (3rd January, 1983), which amounted to approximately nineteen months, could not be considered reasonable in the circumstances and his claim was, therefore, rejected. 15 20 25

Counsel for the respondent, in his written address, which was filed after the revocation, submitted that the recourse was abated as a result of the revocation and could not be proceeded with. Subject to this, he conceded that the sub judice decision should be declared null and void for lack of due inquiry. 30

Counsel for the applicant maintained, in reply, that the recourse is not abated because the revocation has not extinguished all consequences of the sub judice decision ab initio but has caused damaging results to the applicant, which still exist, and the Court can proceed and pronounce on its legality. Counsel further submitted that the Court can pronounce in the same recourse on the legality of the second decision of the Director. 35

What I have to decide first is the question of abatement of the recourse. It has been established by this Court that a recourse is abated if it is deprived of its subject matter. Revocation of an administrative act normally results in the abatement of the recourse.

5 unless damaging effects have resulted to the applicant, which are not extinguished by the revocation of the act (see *Christodoulides v. The Republic*, (1978) 3 C.L.R. 189, 192; *Hapeshis v. The Republic*, (1979) 3 C.L.R. 550, 560; *Kittou v. The Republic*, (1983) 3 C.L.R. 605, 609-610; *Payiatis v. The Republic*, (1984) 3 C.L.R. 1239, 1246; *Vakis v. Republic* (1985) 3 C.L.R. 534, 537, and the decision in Case No. 734/85, *Neocleous v. The Republic*, in which judgment was delivered on the 20th December, 1986, not yet reported)*.

In the light of the above authorities and having regard to the circumstances of the present case, I find that this recourse is not abated and I will, therefore, proceed to consider the substance of the case.

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It is obvious from the contents of the letter of the respondent dated the 30th March, 1983, that the sole reason that the application of the applicant was refused was because «he failed to submit his application within a reasonable time, i.e. within twelve months from the date of his arrival in Cyprus».

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To my mind, this was an easy way out for the respondent to deal with the repatriates' applications of this nature. As it appears from the wording of the Order of the Council of Ministers, the respondent, by fixing the reasonable time generally at twelve months, limited his discretion and failed to exercise his discretion properly, after taking into consideration the special circumstances of the case. If it was the intention, of the Council of Ministers to place any time limit for the importation they would have done so. Instead of the matter was left open to the discretion of the Director, so as to enable him to examine each case on its own merits and circumstances. The Director, also, by limiting his discretion in this way, refrained from conducting an inquiry into the matter especially with regard to the date on which the applicant had formed the intention to settle in Cyprus, as well as the circumstances of the delay in importing his car.

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I, therefore, find that the sub judice decision must be annulled

* Reported in (1986) 3 C.L.R. 1981

for improper exercise of discretion by the Director and lack of due inquiry.

What remains to be considered is the contention of counsel for the applicant that this Court can proceed and consider the validity of the second decision of the respondent in these proceedings. 5
This Court has always taken the stand that it cannot consider matters which are subsequent to the decision challenged by the recourse and I find this contention of counsel as untenable. Counsel is at liberty to advance any arguments he considers necessary regarding the second decision, during the hearing of the recourse 10
challenging the said decision.

In the result, the sub judice decision is annulled with costs in favour of the applicant.

*Sub judice decision 15
annulled. Costs in favour
of applicant.*