

1988 December 30

[A. LOIZOU, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

REVECCA ELLINA,

Applicant,

v.

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

Respondents.

(Case No. 964/87).

*Customs and Excise Duties—Motor vehicles, importation of by Cypriots—The
Customs and Excise Duties Laws, 1978 (Law 19/78)—Sub heading 19 of
Item 0.1 of the Fourth Schedule—Exemption from import duty—
Permanent settlement abroad for a continuous period of 10 years—
5 Determination of the question whether such prerequisite satisfied—Judicial
control—Principles applicable.*

The applicant became a refugee by reason of the Turkish invasion of
Cyprus in 1974. She left Cyprus and settled in England. She stayed abroad
for more than 10 years. However, until 20.8.79 the authorities of the U.K.
10 did not grant to her permanent permit, but only a series of temporary annual
permits for residence. In the light of this fact, the Court held that the deci-
sion that the applicant did not satisfy the requirement of "permanent" settle-
ment for "a continuous period of ten years" was reasonably open to the ad-
ministration. Hence the Court dismissed the recourse.

Recourse 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;*Kourtellas v. The Minister of Finance* (1986) 3 C.L.R. 2079;*Constantinides v. The Republic* (1988) 3 C.L.R. 2375.

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Recourse.

Recourse against the refusal of the respondent to allow applicant to import a motor vehicle free of import duty as a repatriated Cypriot.

E. Efstathiou, for the applicant.

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P. Clerides, for the respondents.*Cur. adv. vult.*

A. LOIZOU P. read the following judgment. The applicant comes from Ayios Georghios Soleas. In August 1974 she was displaced from her village by the Turkish Forces that invaded Cyprus. On the 20th August 1975, she left Cyprus together with her father and went to the United Kingdom for the purpose, as she claims, to settle permanently therein. Upon her arrival there she was granted by the United Kingdom authorities an Entry Certificate, valid for twelve months which was renewed on the 20th August of each subsequent year until the 20th August 1979, when she secured from the United Kingdom Authorities, leave to remain in that Country for an indefinite duration. Her father had been given as from the 11th July 1975, a work permit for a period of twelve months from the date of landing in the United Kingdom.

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According to a certificate from the Department of Health and

Social Security of the United Kingdom, she had been a contributor to that Fund from the 11th April 1976 to the 11th April 1981.

5 On the 6th November 1973, she married in London to Mathesos Apostolou Ellina, from Kambia village who studied at the Waltham Forest College, as a full time student for the Diploma in Automobile Engineering.

10 On the 15th September 1982, she went with her husband and her minor child, Styliana, to Zambia where her husband had secured Employment Permit, with certain restrictions as to the kind of work he would do, valid until the 9th June 1983. This Employment Permit however did not extend to her. Their arrivals and departures in Cyprus during these years are recorded in the relevant file, Exhibit "X", blue 28. As it appears therefrom during the period between 1982 to 1986, they came to Cyprus on holidays for about three months in 1982 and one month in 1984.

20 On the 5th September 1986, the applicant returned to Cyprus for settlement. On the 8th December 1986, the applicant sought from the respondent Director of Customs the importation of a "Mercedes" second hand saloon car, 250D H.P., free of import duty under sub-heading 19 of Item 0.1 of the Fourth Schedule to the Customs and Excise Duties Law, 1978 (Law No. 19 of 1978).

25 On the 21st October 1987, the respondent Director refused the applicant's application on the ground that her absence from Cyprus did not amount to permanent settlement abroad for a continuous period of at least ten years before her return home as provided by the relevant legislation.

30 As against this decision which was communicated to the applicant by letter dated the 21st October 1987, she filed the present recourse.

It is the case for the applicant that the decision of the respondent Director of Customs not to consider her settlement in Eng-

land as a permanent one constitutes a misconception of Law and/or fact. It was argued that the respondent Director of Customs considered the period up to the 20th September 1979, as not amounting to a permanent settlement and that the period of permanent settlement started running as from that date when she was given a permit to remain in the United Kingdom for an indefinite duration.

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It was argued on her behalf that the correct criterion was her intention as manifested by the circumstances and the facts surrounding her case which were before the respondent Director of Customs and who failed to take into consideration the following:-

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(a) that on account of the Turkish invasion she lost her residence at Ayios Georghios Soleas, which could no longer be her place of abode.

(b) that during her stay in the United Kingdom of more than ten years she worked, paying her Social Insurance contributions and the fact that her permit was subject to time limits is immaterial and could not change her professional and social situation and generally the way of life of the applicant, did not change her intention to settle permanently therein. How the United Kingdom authorities treat persons staying there should be of no relevance to this Court, and that this was a wrong criterion to be considered.

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On the other hand counsel for the respondent Director of Customs has urged that the applicant could not be considered as having permanently settled in the United Kingdom between the years 1975 to 1979 as the Authorities of that country did not give her a permit for permanent settlement. The same applies to the period of her stay in Zambia as she was there, conditionally to the duration of the Employment Permit of her husband, which was of a limited duration.

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No doubt the determination of what constitutes "permanent settlement" depends on the facts of each case and a relevant con-

sideration is whether the country in which the person claims to have settled permanently has allowed that person to remain therein as a permanent resident or whether such country has granted only a temporary permit under conditions.

- 5 This question of "permanent settlement", is one of the prerequisites of sub-heading 19, item 0.1, which was considered judicially in a number of cases.

In *Matsas v. The Republic* (1985) 3 C.L.R. 54 at p. 61, I said the following:

- 10 "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."

In *Michael v. The Republic* (1986) 3 C.L.R. 2067, Stylianides J., at p. 2075, had this to say:

- 15 "Permanent establishment is not synonymous to residence. Residence alone is not sufficient. Permanent establishment indicates a quality of residence rather than its length. The duration of the residence, i.e. regular physical presence in a place, is only one of a number of relevant factors. An element of intention to reside and establish is required. Evidence of intention may be important where the period or periods of residence are such as to point to both directions. It is not possible for a person to be permanently settled in the Republic and in another country. The intention of permanently settling may be gathered from the conduct and action consistent with such settlement. Though permanent settlement cannot be assimilated to domicile, it is akin to it and pronouncements on domicile are very relevant and helpful."
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- Useful reference may also made to the case of *Kourtellas v. Minister of Finance (through the Customs Authority)* (1986) 3 C.L.R. 2079.
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Moreover as the Full Bench said in the case of *Christoforos Constantinides v. The Republic* (1988) 3 C.L.R. 2375 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 discretionary power.

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On the totality of the circumstances before me, I have come to the conclusion that the applicant has failed to prove that the respondent Director of Customs acted either under a misconception of fact or law or has exceeded the extreme limits of his discretionary powers.

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The maximum that can be said in the present case is that the applicant's stay abroad could be considered as amounting to permanent settlement is that in the United Kingdom as from the 20th September 1979, onwards, which however does not amount to a ten years continuous permanent settlement abroad, as required by the relevant legislation, in order to entitle her to importation of her vehicle free of duty.

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The recourse therefore fails, and is hereby dismissed but there will be, however, no order as to costs.

Recourse dismissed.

No order as to costs.

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