

(1988)

1988 May 7

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PHOTIS ACHILLEOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF FINANCE,

2. THE DIRECTOR OF CUSTOMS AND EXCISE,

Respondents.

(Case No. 611/84).

*Customs and excise duties—Motor vehicles, importation of by Cypriots—Exemption from duty—The Customs and Excise Duties Law, 1978 (Law 18/78) as amended, section 11—The three prerequisites of the relief—Judicial control of the relevant findings—The time that elapsed between re-
settlement and submission of application must be "reasonable"—What is
"reasonable" depends on the circumstances of the case—Judicial control of
the decision as to "reasonableness"—Principles applicable.*

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The recourse is directed against the refusal to exempt applicant from import duty under the aforesaid legal provision.

The Court found that it was reasonably open to the respondent to determine the time of applicant's resettlement in Cyprus as being in July 1981. The application for relief was submitted in August, 1983. As the Court found that it was reasonably open to the respondent to find that the time between July 1981 to August, 1983 was not "reasonable", the recourse was dismissed.

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Recourse dismissed.

No order as to costs.

Cases referred to:

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

Yiangou v. The Republic (1987) 3 C.L.R. 18;

Salloumis v. The Republic (1987) 3 C.L.R. 412;

5 *Constantouri v. The Republic* (1987) 3 C.L.R. 391;

Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation
(1947) 2 All E.R. 680;

*Secretary of State for Education and Science v. The Metropolitan Borough
of Tameside* (1976) 3 All E.R. 665;

10 *Puhlhofer and another v. Hillington London Borough Council* (1986) 1 All
E.R. 467.

Recourse.

15 Recourse against the decision of the respondents whereby applicant's request for exemption from import duty for a motor car as a repatriated Cypriot was rejected.

M. Aspri (Miss) for A.S. Angelides, for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.:

20 STYLIANIDES J. read the following judgment: The applicant by means of this recourse seeks the annulment of the decision of the respondent Director of Customs, whereby his request for exemption from import duty for a motor-car was rejected.

The applicant was born in Cyprus. In 1955 he emigrated to the United Kingdom. He settled himself there, where he established a business.

In 1977 he purchased a flat in Cyprus.

In 1979 he came to Cyprus and caused the registration of a Construction company, which is still in operation. He is one of its shareholders. 5

He returned to the Republic of Cyprus on 8th July, 1981 together with his family, as his business in England went bankrupt, and he resided in the flat. 10

Upon his such arrival he imported his personal and household effects free of customs duty because he declared that he "intended to settle permanently in Cyprus"- (see Declaration of the applicant dated 22nd July, 1981).

In March 1982 he travelled to Greece with his family, where he unsuccessfully tried to find employment. 15

In October 1982 the whole family went to England, where the wife gave birth to a child. During their short stay in England- until December 1982- they lived in the house of a relative.

In April 1983 he went to Greece, wherefrom he returned to Cyprus on 15th August, 1983 with a car. 20

On 10th August, 1983 he submitted an application for exemption from import duty.

The competent Authority rejected his such application on the ground that the request did not take place within a reasonable period from the date of his return, which was established to be the 8th July, 1981. 25

Hence this recourse.

The respondent arrived at the sub judge decision having taken into consideration:-

5 (a) That the applicant left the United Kingdom and came with his family and household and personal effects on 8th July, 1981. He stated clearly on the day that he intended to settle permanently in Cyprus, thus he paid no import duty.

(b) That since July 1981 he was paying regularly his contributions to the Cyprus Social Insurance Fund.

10 (c) That during the whole period he owned a flat at Larnaca, which was his permanent residence irrespective of the period of his absence abroad.

15 (d) That his stay for a short period in Greece and the short period in England did not have the character of permanent settlement in any of these two countries. It is notable that even in 1984 he stayed - as it appears from his passport-for three months in Greece.

It was submitted by learned counsel for the applicant that:-

20 (a) In July 1981 the applicant came to Cyprus to find out whether Cyprus was more profitable for permanent settlement, having regard to his family, financial and occupational matters. Then he had to choose between Greece and Cyprus. He travelled to Greece, but, due to intervening health problems of his wife, he travelled to England. He returned to Greece and, ultimately, as late as August 1983, he decided to settle permanently in Cyprus. He imported the car and submitted the relevant application for exemption from import duty. In view of all the above
25 the conclusion that he settled permanently in Cyprus on 8th July, 1981 was not reasonably open to the respondent.

30 (b) The applicant's case should have been treated on its own special features. Indeed he did declare in July 1981 that he intended to settle permanently in Cyprus, but his said intention was re-

alized only on 5th August, 1983, after he looked for alternative places abroad; and

(c) Even if he returned to Cyprus in July 1981, then, having regard to the personal and family circumstances of the applicant, two years was reasonable time within which to apply. 5

Before the relief sought can be granted, under the Order issued by the Council of Ministers in virtue of its powers under section 11 of the Customs Duties and Excise Law, 1978 (Law No. 18/78) as amended, the Director has to be satisfied that the following prerequisites are met by the applicant:- 10

(a) Permanent settlement abroad for at least ten continuous years;

(b) Return and permanent establishment in the Republic; and

(c) Importation within reasonable time from the date of arrival. 15

It is for the Director, on the material placed before him, to reach a decision on each of the aforesaid and issue the administrative act contemplated, either accepting or rejecting the application - (*Philippos Michael v. The Republic* (1986) 3 C.L.R. 2067; *Anna Yiangou v. The Republic of Cyprus* (1987) 3 C.L.R. 18; *Ioannis Salloumis v. The Republic* (1987) 3 C.L.R. 412). 20

Having given due consideration to the matter, I have reached the conclusion, in the light of all the material before me, that, in the particular circumstances of this case, it was reasonably open to the respondent Director of Customs to find that the applicant has returned and permanently established in the Republic in July 1981, when he brought his household and personal effects in Cyprus. 25

The evaluation of the factor of "reasonable time" between the re-establishment in Cyprus and the claim for relief from the importation of the motor-car was left by the legislator to the judge. 30

ment and discretion of the Director of Customs.

5 Where anything is limited to be done within a "reasonable time", the question what is a reasonable time must necessarily depend on the circumstances, and is, therefore, a question of fact - (*Philippos Michael v. The Republic* (1986) 3 C.L.R. 2067, at 2077; *Elli Constantouri v. The Republic* (1987) 3 C.L.R. 391).

10 If the Director in the exercise of his discretion finds that time is, or is not reasonable and his such decision is not otherwise faulty, the Court will not disturb it if it was reasonably open to the Director.

15 In *Associated Provincial Picture Houses, Ltd. v. Wednesbury Corporation* [1947] 2 All E.R. 680, with regard to unreasonableness of an act of a local authority it was stated that it is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere. That, I think, is right; but to prove a case of that kind would require something overwhelming.

20 The observation by Lord Diplock in *Secretary of State for Education and Science v. Metropolitan Borough of Tameside* [1976] 3 All E.R. 665 at 695: "The very concept of administrative discretion involves a right to choose between more than one possible courses of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred" should always be kept in mind.

25 Where the existence or non-existence of a fact is left to the judgment and discretion of a public body and that fact involves a broad spectrum ranging from the obvious to the debatable to the just conceivable, it is the duty of the Court to leave the decision of that fact to the public body to whom Parliament has entrusted the decision-making power save in a case where it is obvious that the public body, consciously or unconsciously, are acting perversely - (*Puhlhofer and another v. Hillingdon London Borough Council* [1986] 1 All E.R. 467).

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I am of the opinion that it was reasonably open to the respondent to find that the period from July 1981 to August 1983 was not within the limit of reasonable time after the applicant's return to Cyprus.

On the application of counsel for the applicant the case was re-opened in order to enable him to produce three letters-dated 13.2.86, 26.4.86 and 4.7.86. In those letters it was contended that the applicant re-established himself in Cyprus on 5.8.1983. 5

The Ministry of Finance replied by letter dated 12th March, 1987, the material part of which reads:- 10

"2. Όπως γνωρίζετε ο Υπουργός Οικονομικών δυνάμει των προνοιών του πιο πάνω εδαφίου έχει διακριτική εξουσία να εξετάζει αιτήσεις Κυπρίων που ήλθαν για μόνιμη εγκατάσταση στην Κύπρο προ της 1.1.1982.

3. Όπως έχει δηλωθεί τόσο από σας στις πιο πάνω επιστολές σας όσο και από τον πελάτη σας στη σχετική του αίτηση η επανεγκατάσταση του στην Κύπρο έλαβε χώρα στις 5.8.83. 15

4. Ενόψει των πιο πάνω είναι φανερό ότι ο Υπουργός Οικονομικών δεν έχει διακριτική εξουσία να εξετάσει το αίτημα του πελάτη σας." 20

It was submitted by counsel that this letter contradicts the decision of the Director of Customs. With respect, the Ministry in paragraph 3 of the said letter does only set out the allegation of the counsel and does not express any decision or conclusion. 25

For all the foregoing reasons, this recourse is dismissed. The sub judice decision is confirmed.

Let there be no order as to costs.

Recourse dismissed.
No order as to costs. 30