

1988 August, 29

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHRISTAKIS KYPRIANOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF DEFENCE AND/OR  
2. THE MINISTER OF FINANCE AND/OR  
3. THE ACCOUNTANT-GENERAL,

*Respondents.*

*(Case No. 339/87).*

*Army of the Republic—Lieutenant in the Medical Corps (Υπίταρος)—  
Scholarship for post-graduate studies at the Medical Training School  
(Σχολή Εφαρμογής Υγειονομικού) in Greece for obtaining specialization  
in Psychiatry-Neurology—Such scholarship was governed by the relevant  
5 contract, which the applicant had signed—During his training the applicant  
was still under mobilization orders and military discipline and had to obey  
orders—This fact did not change the regulations governing scholarship—  
Therefore, applicant's emoluments were correctly reduced.*

10 The facts of this case are sufficiently indicated in the hereinabove head-  
note.

*Recourse dismissed.*

*No order as to costs.*

**Recourse.**

15 Recourse against the decision of the respondents to deduct  
from the basic emoluments of applicant the sum of £245.- month-  
ly on the grant to him of a scholarship.

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

*Chr. Ioannides*, for the respondents.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. Applicant by the present recourse prays for the following relief:

5

1. A declaration that the act and/or decision of the respondents to deduct from the basic emoluments and/or the applicant's salary the sum of £245.- or any other sum monthly is null and void, illegal and/or not legally effected.

2. A declaration of the Court that the decision communicated in writing on 19th February, 1987, by respondent 1, by which he insisted on the decision for the deductions from the salary of the applicant is null and void and of no legal effect.

10

3. A declaration of the Court declaring the continuous refusal and/or omission of the respondents to discontinue the unjust and unlawful deduction from the salary of the applicant as illegal and amounting to unequal treatment.

15

The legal grounds on which the recourse is based are that the sub judice decision was reached under a misconception of fact and in excess and/or abuse of power; that it was taken under a procedure which is contrary to previous acts and/or decisions of the respondents; a due inquiry has not been carried out; it violates the law and the Constitution; and it lacks due reasoning.

20

The facts of the case are briefly as follows:

The applicant is an army doctor and he is the holder of the rank of Lieutenant in the Medical Corps (Υπίατρος). Since 10th January, 1981 he was serving at the Hospital of the National Guard. The applicant was granted a scholarship in September, 1986 for three years post graduate studies at the Medical Training School

25

(Σχολή Εφαρμογής Υγειονομικού) in Greece for the purpose of obtaining specialization in Psychiatry-Neurology.

5 It is the allegation of the applicant that the said scholarship was granted to him in a purely military procedure by the issue of relevant orders and also by the issue of mobilization orders placing the applicant to the Medical Training school which entailed compliance with military regulations and the undertaking of obligations arising therefrom whereas according to the facts alleged by the respondents the specialization of the applicant is not included in the basic or mandatory training which is contemplated for doctors of the army of the Republic but it is outside such procedures. 10 The Ministry of Defence considered the application of the applicant for specialization abroad as a case of an application for a scholarship and in fact it was granted to him as such under the terms of an agreement for scholarship signed by the applicant which was subject to the ordinary terms of scholarships which were well known to the applicant and were brought to his knowledge when the scholarship was granted to him. One of these terms was that during the period of his specialization he would be 15 paid an allowance in accordance with the regulations for the grant of financial assistance to scholars and also the sum of £165.- as scholarship allowance from the Republic of Cyprus which granted the scholarship: The terms of the scholarship were known to him from the personal contacts he had with the Ministry of Defence, the Ministry of Finance, the Accountant-General's office and the Committee for Scholarships to whom he made several oral representations in an effort to secure payment of full salary plus overseas allowance which is granted in ordinary cases of training of members of the army.

30 It is further alleged by counsel for the respondents that when the decision for his scholarship was taken on 9th September, 1986, the applicant who was at the Ministry of Defence waiting for the result of his application was informed orally that the scholarship was granted to him and he accepted it and in fact on the following day he attended the Ministry with his mother and 35 signed the agreement for the grant to him of the scholarship with

his mother as a guarantor.

Following the provisions of the regulations for scholarships the applicant was paid for the first three months, 10th September, 1986 - 10th December, 1986, his full salary and also the scholarship allowance of £165 and as from 11th December, 1986, he was being paid reduced emoluments in accordance with the provisions of the regulations for scholarships granted by the Republic. 5

It was the contention of counsel for applicant that the placing of the applicant to the Medical Training School entails observance of military regulations and the undertaking of obligations arising therefrom. The regulations concerning ordinary scholarships granted by the government have no application to officers of the army as the officers are trained in Greece by virtue of a purely military procedure and they continue to perform their military duties, they are subject to military regulations and have to observe a general educational programme in the same manner as all other servicemen. When doctors of the military force are sent to Greece they are normally paid their full emoluments plus the scholarship allowance. The applicant was not sent to Greece for post-graduate training as an ordinary citizen in a hospital or any other institution where specialization is granted but he was sent to Greece as an officer, member of the Cyprus army and continued to serve as such whilst undergoing his training. The procedure followed in the case of the applicant, counsel submitted, is contrary to the established practice and the military procedure and it amounts to a discriminatory treatment of the applicant violating Article 28 of the Constitution. 10 15 20 25

Counsel for the respondents, on the other hand, submitted that the decision of the respondents was taken properly and in accordance with the terms subject to which scholarships are granted and that the scholarship which was granted to the applicant was not a scholarship granted under any army regulations but it was a scholarship granted under an agreement which was subject to the rules and regulations which govern scholarships. 30

From the material before me it appears that what was granted to the applicant was an ordinary scholarship for three years in accordance with the terms of scholarships which are granted by the government of the Republic. An agreement was signed in that respect embodying the terms of the scholarship with certain obligations undertaken by the applicant compliance to which was guaranteed by his mother. Government scholarships are granted subject to the regulations concerning the grant of financial assistance to scholars. In accordance with such regulations the emoluments of the scholar who happens to be a civil servant for the period of the first three months would be his full emoluments and after the expiration of three-months his emoluments are reduced in accordance with the scales set out in such regulations.

On the material before me I cannot accept the contention of counsel for applicant that the scholarship in question was governed by any other regulations except those embodied in the contract signed by the applicant which were subject to the regulations for ordinary government scholarships. The fact that mobilization orders were issued to him and he was bound to wear military uniform or obey military orders during his scholarship or attend a military training school for specialization in medicine was part of his military obligations and does not in any way alter or modify the regulations concerning scholarships subject to which this scholarship was granted to him.

The complaint of the applicant as to discrimination vis a vis other officers who are normally sent to Greece for training is not a sound one as the case of officers or other members of the army who are sent to Greece for training is a procedure of the normal training of servicemen which entails obligations for specialization or further training abroad and is carried out under military procedures. The applicant in the present case was granted a scholarship for specialization in medicine under a procedure followed for the grant of scholarships and not under military procedures which are under the control and management of military authorities. Therefore, he cannot complain of discrimination vis a vis normal servicemen who are sent for short terms for training abroad and to

whom their full emoluments plus the overseas allowance are paid.

In the circumstances of the case and on the basis of all the material before me I have come to the conclusion that once his scholarship was subject to the regulations governing ordinary scholarships granted by the government of the Republic any deductions from his emoluments which were in accordance with regulations governing scholarships were properly made by the government and, therefore, this recourse fails and is hereby dismissed but in the circumstances I make no order for costs.

5

10

*Recourse dismissed.  
No order as to costs.*