

1969  
Aug. 16  
—  
MELIS  
KYRIAKIDES  
v.  
REPUBLIC  
(COMMANDER  
OF POLICE)

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MELIS KYRIAKIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS, THROUGH  
THE COMMANDER OF POLICE,

*Respondent.*

(Case No. 33/69).

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*Police Force—Police Constable—Bachelor Police Constable—Obligation to lodge in barracks save under a special permission by the Commander—Paragraph 1(1) of Police Force Standing Order III/10—Relevant request for exemption duly examined—Properly refused—No excess or abuse of powers—Provisions of said paragraph 1(1) not repugnant to Article 28 of the Constitution safeguarding the principle of equality and of non-discrimination.*

*Constitutional Law—Principle of equality—Prohibition of discrimination—Article 28 of the Constitution—Not excluding reasonable distinctions—Paragraph 1(1) of Police Force Standing Order III/10 requiring bachelor constables to lodge in barracks (subject to special exemptions) does not entail any discrimination contrary to Article 28 against bachelor police constables as compared with married constables—Reasonable distinction allowed—Obvious difference in responsibilities and status in life between a bachelor and a married man.*

*Equality—Principle of—Article 28 of the Constitution—Does not exclude reasonable distinctions—See, also, hereabove.*

*Discrimination—Prohibition of—Article 28 of the Constitution. See hereabove.*

*Discretionary powers—Proper exercise—Proper examination of relevant factors—Consequently, allegation of excess or abuse of powers fails.*

*Abuse and excess of powers—See above.*

In this case the Applicant police constable complains against a decision of the Commander of the Nicosia Police Division whereby he refused to grant to the Applicant exemption from the provisions of paragraph 1(1) of Police Force Standing Order III/10 under which a bachelor police constable (such as the Applicant) has to lodge in barracks unless granted special permission to lodge out. Para. 1(1) aforesaid is set out in full *post* in the judgment of the Court.

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It was argued on behalf of the Applicant (1) that the aforesaid provisions are unconstitutional as involving a discrimination against bachelor police constables, when compared with married constables, contrary to Article 28 of the Constitution safeguarding the right of equality etc. etc.; (2) that the refusal complained of was decided upon without his (the Applicant's) request for exemption having been duly examined i.e. that the *sub judice* decision was taken in excess or abuse of powers.

Dismissing the recourse on both grounds, the Court:—

*Held*, (1). I can find nothing in the said paragraph 1(1) (note: the full text of which is set out *post* in the judgment) which contravenes the right of equality, as safeguarded under our Constitution, particularly under Article 28 thereof; or which entails a discrimination against bachelor constables contrary to the said Article. The principle of equality, and the cognate prohibition against discrimination, are not infringed by reasonable distinctions (see, *inter alia*, *Fekkas v. The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173; also the case "Relating to certain Aspects of the Laws on the Use of Languages in Education in Belgium" decided by the European Court of Human Rights of the Council of Europe, on the 23rd July 1968).

(2) There is an obvious difference in responsibilities and status in life between a bachelor and a married man, and it was not at all unreasonable to limit the obligation to sleep in barracks so as to apply only to bachelor constables; and there is, moreover in the relevant provisions sufficient latitude for remedying hardship in any individual case.

(3) Coming now to the second ground of complaint (*supra*), I am quite satisfied, having looked into the official records which were produced, that the relevant request of the Applicant was duly examined and that there has not been any excess

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or abuse of powers on the part of the Commander; I find also the reasons given for the refusal of such request quite reasonable. On the other hand I think that the recourse was made bona fide; there will be, therefore, no order as to costs.

*Recourse dismissed.*

*No order as to costs.*

Cases referred to:

*Fekkas v. The Electricity Authority of Cyprus* (1968) 1 C.L.R. 173;

*The case "Relating to certain Aspects of the Laws on the Use of Languages in Education in Belgium" decided by the European Court of Human Rights, of the Council of Europe on the 23rd July, 1968.*

### Recourse.

Recourse against the decision of the Commander of the Nicosia Police Division whereby Applicant was refused exemption from the provisions of paragraph 1(1) of the Police Force Standing Order III/10.

*D. Georghiades*, for the Applicant.

*K. Talarides*, Senior Counsel of the Republic, for the Respondent.

*Cur. adv. vult.*

The following judgment was delivered by:—

TRIANTAFYLIDES, J.: In this case the Applicant complains against a decision of the Commander of the Nicosia Police Division—who comes under the Respondent Commander of Police—by means of which he was refused exemption from the provisions of paragraph 1(1) of Police Force Standing Order III/10 (see *exhibit* 3).

Paragraph 1(1) of Force Standing Order III/10 reads as follows:—

“Bachelor constables when off duty must be in barracks by 01.00 hrs during the months of June, July, August and September, and 24.00 hrs during the other months of

the year. Bachelor constables of good behaviour and reputation, who have parents or close relatives living in the town or suburbs in whose house they may lodge are, however, exempted from this order provided that they apply for and are granted special permission to lodge out by their Commander. This is to be regarded as a privilege which may be withdrawn at any time."

The Applicant, who is a bachelor constable, stationed in the Nicosia Police Division, applied to his Commander, on the 7th November, 1968 (see *exhibit 2*), requesting permission to lodge out, and not in barracks; he stated that he wished to reside at Engomé, near Nicosia, with his mother, sister and brother, and he stressed that he had enrolled at the Salonica University in order to study Mathematics by correspondence, and that his having to be in barracks would make it difficult for him to study and would, also, entail, in the circumstances, inconvenience for his colleagues there.

He received a reply dated the 12th November, 1968 (see *exhibit 1*) by which he was informed that his application had not been approved, though it had been carefully examined and all the grounds stated therein had been taken into account.

As a result, he filed this recourse on the 25th January, 1969.

At the hearing of this case counsel for Applicant has attacked the *sub judice* decision on two grounds only:- First, that paragraph 1(1) of Force Standing Order III/10 is unconstitutional as involving a discrimination against bachelor constables, when compared with married constables who though they receive the same emoluments and perform the same duties as bachelor constables are not required to sleep in barracks, and, secondly, that the request of the Applicant for exemption was not properly considered.

I can find nothing in the said paragraph 1(1) which contravenes the right of equality, as safeguarded under our Constitution, and particularly under Article 28 thereof; or which entails a discrimination against bachelor constables contrary to such Article.

The principle of equality, and the cognate prohibition against discrimination, are not contravened by reasonable distinctions (see, *inter alia*, *Fekkas v. The Electricity Authority of Cyprus*

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(1968) 1 C.L.R. 173; as well as, the case “Relating to Certain Aspects of the Laws on the Use of Languages in Education in Belgium” decided by the European Court of Human Rights, of the Council of Europe, on the 23rd July, 1968).

There is an obvious difference in responsibilities and status in life between a bachelor and a married man, and it was not at all unreasonable to limit the obligation to sleep in barracks so as to apply only to bachelor constables; and there is, moreover, in the relevant provision, sufficient latitude for remedying hardship in any individual case.

Coming, next, to the second contention of counsel for Applicant, I am quite satisfied, having looked through the official records which were produced, that the relevant request of the Applicant was duly examined, and that there has not been any excess or abuse of powers, on the part of the Divisional Police Commander, in refusing such request.

In a letter addressed by the Divisional Police Commander, Nicosia, to the Commander of the Police (see *exhibit 4*) it is clearly stated that the reason for which the request of the Applicant was refused was the fact that he was a member of a Police Reserve Force, which had to be ready all the time; it was added that at the particular barracks there were rooms in which the Applicant could study, if he so wished.

It is correct that this letter was written after the recourse had been filed and served on the Commander of Police; presumably, on receiving copy of the recourse, he decided, immediately, as the superior authority, to examine himself the matter and he sought information about it from the Nicosia Police Division; and he received, in reply, the said letter which is dated the 1st February, 1969.

I have, however, no ground for thinking that the reason given in such letter was an afterthought and not the reason which actually led to the refusal of the request of the Applicant.

I find such reason quite reasonable; especially, as under the provision concerned, the Applicant would not have to be in barracks—when off duty—before midnight, at the earliest, and he could use all his other time off duty to study at home, if he so wished, without suffering or causing—as alleged—any inconvenience in the process of doing so; and one would, normally, hardly expect him to study after midnight.

In the light of all the foregoing this recourse fails and it is dismissed accordingly; but as I do think that it was made bona fide, for the purpose of bringing before the Court a grievance which the Applicant and his advocate considered justifiable, I would not penalize the Applicant with an order for costs against him.

*Application dismissed;  
no order as to costs.*

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