IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CHARALAMBOS DALITIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER AND/OR MINISTRY OF DEFENCE,

Respondent.

(*Case No.* 82/69).

Army of the Republic—Discipline—Lieutenant interdicted pending criminal proceedings before the Military Court—Regulation 19 *of the Disciplinary Regulations of the Army of the Republic* 1962—*Omission to revoke interdiction for a long time after the conclussion of the said criminal proceedings for reasons irrelevant to the present case—Omission contrary to law and in abuse of powers—Cf. section* 6 *of Law No.* 8 *of* 1961—*Regulation* 12 *of the aforesaid Regulations.*

Administrative act or omission—Omission to revoke interdiction (supra) *for reasons extraneous to the object of said interdiction—Namely because the Applicant (the interdicted person) was considered by the authorities to be undesirable in the ranks—But it was not possible to take the appropriate disciplinary proceedings under section* 6 *of Law No.* 8 *of* 1961, *because no Disciplinary Board could be appointed as there was no at the moment Commander of the Army to appoint such Board—Omission contrary to law and in abuse of powers.*

The Applicant is a lieutenant in the Cyprus army having enlisted in May, 1961. In July, 1968 a charge was filed against him in the Military Court on three counts, the third count being for behaviour prejudicing the military discipline and the maintenance of military order contrary to section 101 of the Military Criminal Code and Procedure 1964 (Law No. 40 of 1964). As a result of these charges the Applicant was under the provisions of regulation 19 of the Disciplinary Regulations of the Army of the Republic 1962, interdicted from the exercise of the functions of his office with effect from July 15, 1968,

pending the trial of the case by the Military Court. By virtue of para. (2)(b) of the same regulation the Applicant was allowed to draw half his salary and allowance as well as the whole of his rent allowance during the period of his interdiction.

The case came up for hearing before the Military Court on October 29, 1968. On that day counsel appearing for the prosecution offered no evidence on the first two counts and the Applicant was consequently acquitted and discharged on those counts. But he pleaded guilty on the third count (*supra*) and he was sentenced to three weeks imprisonment with suspension of sentence for six months.

The interdiction of the Applicant has never been withdrawn; and he continues to receive the aforesaid allowances under the provisions of regulation 19 (*supra*).

As a result this recourse was filed on March 10, 1969, whereby the Applicant prays for a declaration that the omission of the Respondents to revoke the aforesaid interdiction (which was communicated to him by the Respondent's letter of July 13, 1968) amounts to abuse and excess of powers and has, therefore, to be declared *null* and *void.*

During the argument counsel for the Respondents conceded that the reason why the inderdiction had not been revoked is that the authorities consider the Applicant undesirable in the ranks of the National Guard in view of his behaviour and acts; but, unfortunately, "it is not possible for the Ministry of Defence to pursue the procedure laid down in section 6 of Law No. 8 of 1961, because no Disciplinary Board can be appointed as at the moment there is no Commander of the Army who, according to regulation 12, appoints the Disciplinary Board."

In granting the application and declaring that the omission complained of ought not to have been made, the Court:

Held, (1). I think that the considerations invoqued by counsel for the Respondents (*supra*) are quite irrelevant to the present case and cannot justify the indefinite interdiction of the Applicant either by way of punishment or as a means of preventing him from resuming his duties.

(2) In the circumstances, the omission to treat the Applicant's interdiction as terminated is contrary to law and that the keeping in force of such interdiction is made in abuse of powers.

(3) In the result, it is hereby declared that the omission complained of ought not to have been made and that whatever has been omitted should have been performed. And I award £20 costs in favour of the Applicant.

Declaration and order for costs as aforesaid.

Recourse.

Recourse for a declaration that the omission of the Respondent to revoke the decision by which the Applicant was interdicted, is *null* and *void* and of no effect.

N. Charalambous, for the Applicant.

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

Cur. adv. vult.

The following judgment was delivered by:

LOIZOU, J.: The Applicant is a lieutenant in the Cyprus army having enslisted in May, 1961.

In July, 1968, a charge was filed against him in the Military Court containing three counts as follows: (a) for having carnal knowledge of a soldier against the order of nature contrary to s. 171 of the Criminal Code; (b) for unlawfully and indecently assaulting the said soldier contrary to s. 152 of the Criminal Code and (c) for behaviour prejudicing the military discipline and the maintenance of military order contrary to s. 101 of the Military Criminal Code and Procedure of 1964 (Law No. 40 of 1964).

As a result of these charges the Applicant was, under the provisions of reg. 19 of the 1962 Disciplinary Regulations of the Army of the Republic, interdicted from the exercise of the functions of his office with effect from the 15th July, 1968, pending the trial of the case by the Military Court. The decision to interdict the Applicant is contained in the letter dated 13th July, 1968 (*exhibit* 1) addressed by the Director-General, Ministry of Defence to the General Staff of the National Guard. It appears from para. 2 of this letter that the Applicant was, by virtue of the provisions of para. (2) (b) of the same regulation allowed to draw half his salary and

allowance as well as the whole of his rent allowance during the period of his intediction. Copy of this letter was handed to the Applicant on the 15th July, 1968.

The case came up for hearing before the Military Court on the 29th October, 1968. On that day counsel appearing for the prosecution offered no evidence against the Applicant on the first two counts and he was consequently acquitted and discharged on those counts. He pleaded guilty to the third count and he was sentenced to three weeks imprisonment with suspension of sentence for six months.

The interdiction of the Applicant has never been brought to an end and he continues to receive the allowances authorised under the provisions of reg. 19.

As a result this recourse was filed on the 10th March, 1969. The Applicant prays for a declaration that the omission of the Respondents to revoke their decision by which he was interdicted is *null* and *void* and of no effect.

The Respondents by their opposition alleged that no recourse lies in as much as the omission challenged is not completed. They base their opposition (a) on the ground that neither under the Army of the Republic (Constitution, Enlistment and Discipline) Law 1961 (8 of 1961) nor under the regulations made thereunder is any time limit provided for terminating the interdiction and (b) that the Applicant has never applied to the Respondents to terminate his interdiction and to resume his duties.

It was submitted by learned counsel for the Applicant that Applicant's interdiction should have been brought to an end upon the conclusion of the Criminal proceedings against him and even if no specific time limit was provided by the Law the omission of the Respondents, in the circumstances of this case, amounts to abuse of powers and also to inhuman and degrading treatment contrary to Article 8 of the Constitution.

Learned counsel for the Respondents, on the other hand, had this to say in the course of his address.

> " It is a fact that the authorities consider the Applicant undesirable in the ranks of the National Guard in view of his behaviour and of the acts which he committed. He was not as a matter of fact tried on the first two counts but the prosecution offered no evidence against him. Unfortunately it is not possible for the Ministry of Defence to pursue the procedure laid down in s. 6 of Law 8 of

1961 because no Disciplinary Board can be appointed as at the moment there is no Commander of the Army who, according to Regulation 12, appoints the Disciplinary Board."

He has made no reference at all to the grounds set out in the written opposition.

The sole question that falls for consideration and decision in the present case, on the basis of the issues raised and argued by the parties, is the effect of the omission on the part of the Respondents to terminate Applicant's interdiction for so long after the conclusion of the Criminal Proceedings against him.

The object of interdiction is that a suspected offender should cease to exercise the powers and functions of his office pending the investigation into the alleged offence and in case such investigation results in proceedings against him until the final disposal of such proceedings. I think that this is reasonably clear from the wording of reg. 19 of the 1962 Disciplinary Regulations.

It seems to me that in the present case the real reason why the Respondents have omitted to bring the interdiction to an end are those so frankly stated by learned counsel for the Respondents in the course of his adress i.e. that the Applicant is considered undesirable in the ranks of the National Guard and that as things are at present they have no means of getting rid of him. I think that, independently of the fitness or otherwise of the Applicant to be a member of the National Guard, these considerations are quite irrelevant to the present case and cannot justify the indefinite interdiction of the Applicant either by way of punishment or as a means of preventing him from resuming his duties.

I am of the view that, in the circumstances of this case, the omission to treat Applicant's interdiction as terminated is contrary to law and that the keeping in force of such interdiction is made in abuse of powers.

For the above reasons this recourse must succeed.

In the result it is hereby declared that the omission complained of ought not to have been made and that whatever has been omitted should have been performed. In all the circumstances the Applicant is entitled to costs which I assess at £20.

Declaration and order for costs as aforesaid.