1970
Sept. 16
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ANDREAS PHILIPPOU
v.
REPUBLIC (MINISTER OF INTERIOR)

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PHILIPPOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF INTERIOR,

Respondent.

(*Case No.* 267/69).

Military Service—National Guard—Reservist discharged under section 29 *of the National Guard Law,* 1964 (*Law No.* 20 *of* 1964)—*Recalled for service in* 1969 *by virtue of an order of the Council of Ministers published in* 1966, *and upon the determination of his temporary exemption as a person employed in an essential service—Bound to serve in the light of the relevant legislation—National Guard Laws* 20/64, *section* 29, 49/64, *sections* 3 *and* 4 *and* 26/65, *sections* 3 *and* 14—*Temporary exemption from service does not mature into a permanent one.*

Administrative Acts or Decisions—Extinct administrative act—Order of the Council of Ministers made under the National Guard Laws 1964 *to* 1965 (*published in Supplement No.* 3 *Not.* 72 *of the Official Gazette dated* 14.2.1966)—*Not an extinct administrative act at the time the* sub judice *decision was taken—Principles set out in Dendias, Administrative Law, 5th ed. Vol. A p.* 135 *and in Kyriacopoulos, Greek Administrative Law, 4th ed. Vol. B. p.* 401, *not applicable to the aforesaid Order of the Council of Ministers—Cf. section* 3 *of the National Guard Law* 1964 (*Law* 20/64), *section* 4 *of the National Guard* (*Amendment*) (*No.* 2) *Law,* 1967 (*Law* 70/67).

The facts sufficiently appear in the judgment of the Court dismissing this recourse with no order as to costs.

Recourse.

Recourse against the validity of the Decision of the Respondent to the effect that Applicant had to enlist and serve for six months as a reservist in the National Guard.

L. Papaphilippou, for the Applicant.

L. Loucaides, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:

TRIANTAFYLLIDES, J.: By this recourse the Applicant challenges the validity of a decision of the Respondent, communicated to his counsel by letter dated the 16th August, 1969 (which is part of *exhibit* 3); such decision was to the effect that the Applicant had to enlist and serve for six months, as a reservist, in the National Guard, in accordance with an order of the Council of Ministers, published in the Official Gazette on the 14th February, 1966 (Not. 72, 3rd Supplement).

By a letter addressed to the Respondent by Applicant's counsel on the 28th July, 1969 (see again *exhibit* 3) the Applicant had disputed, on the basis of the particular circumstances of his case (which will be referred to later on in this judgment), his obligation to serve in the National Guard pursuant to the said order of the Council of Ministers.

Actually, before being given, as stated, a reply, in the matter, by the Respondent, the Applicant received a formal notice, dated the 9th August, 1969, calling upon him to enlist on the 1st September, 1969 (see *exhibit* 2). This notice appears to have been issued by an officer in the National Guard Headquarters. It has been contended by counsel for the Applicant that this notice should have been issued by the Respondent and that it is, therefore, invalid. I do not think that there is any substance in this issue: The notice was merely an act of execution, of non-executory nature, implementing the call up of the Applicant which was already ordered in the prescribed manner, and it could quite properly be issued by the military authorities; in any case, it is of no material effect as it must be regarded as having merged with the subsequent, the *sub judice*, final decision of the Respondent.

The salient factors in this case, in the context of which the claim of the Applicant to be exempted from military service, as a reservist, has arisen, are as follows:–

The Applicant became, initially, a special constable, under section 30 of the Police Law (Cap. 285), on the 12th March, 1964 (see *exhibit* 4).

Then, on the 2nd June, 1964, the National Guard Law, 1964 (Law 20/64) was promulgated. The Applicant became a member of a unit of the Guard, through the operation of section 29 of such Law, and, eventually, he was discharged therefrom, as a reservist, on the 2nd November, 1964 (see *exhibit* 1), by virtue of the Application of the provisions of the said section 29, as amended in the meantime by section 3 of the National Guard (Amendment) Law, 1964 (Law 49/64); see, also, in this respect, a relevant decision of the Council of Ministers, taken under such section 29 and published in the Official Gazette on the 31st October, 1964 (Not. 469, 3rd Supplement).

By section 4 of Law 49/64 there was added to Law 20/64 a further section, section 30, which, until the publication of the order of the Council of Ministers of the 14th February, 1966—by means of which the Applicant was called up for a further service of six months, as a reservist—had been amended by section 14 of the National Guard (Amendment) Law, 1965 (Law 26/65). Thus, whereas originally a reservist could not be called up for service, under section 30, for a period exceeding six months, as the law stood when the Applicant was called up on the 14th February, 1966, it enabled the calling up of reservists, under section 30, for as long as eighteen months; and it is most relevant to note that on the said date the duration of normal military service, to which service by virtue of section 30 is expressly correlated, was, also, eighteen months (see section 5 of Law 20/64 as amended by section 3 of Law 26/65).

In the light of the foregoing review of the relevant legislation I can find no merit in the submission that if the Applicant were to be found by me to be bound in law to serve pursuant to the call up of reservists made, as aforesaid, by the order published on the 14th February, 1966, then he has to serve for only one more month, because he has already served, under section 29 of Law 20/64, for a period of five months, viz. from the 2nd June, 1964, when Law 20/64 was promulgated, to the 2nd November, 1964, when he was discharged from the National Guard as a reservist. There might have been merit in this submission if when the Applicant was called for service, as a reservist, under section 30, for six months out of a possible period of eighteen months, the duration of normal military service, under section 5, was six months, and not eighteen months.

The Applicant, having been born in 1940, belongs to the 1958 age group and, thus, he is definitely within the ambit of paragraph (a) of the order in question of the Council of Ministers, published on the 14th February, 1966. On the 17th February, 1966, there was published in the Official Gazette a notice issued by the Minister of Interior (Not. 74, 3rd Supplement)—who had been authorized by paragraph (c) of the said order of the Council of Ministers to regulate the application of such order—as a result of which the Applicant was required to enlist as from the 1st March, 1966.

The Applicant did not, however, enlist because his Department, the Department of Customs, took steps for his temporary exemption from military service as a person employed in an essential service, and, eventually, he was so exempted, up to the 31st July, 1969, by directions given, from time to time, by the Minister of Interior (see the file *exhibit* 5), under paragraph (c) of a decision of the Council of Ministers, published in the Official Gazette on the 16th July, 1964, (Not. 248, 3rd Supplement).

As the last temporary exemption granted to him expired on the 31st July, 1969, the Applicant was ordered to enlist—as mentioned already—as from the 1st September, 1969 (see *exhibit* 1).

It has been contended by learned counsel for the Applicant that as the Applicant had been exempted for the whole period of six months commencing on the 1st March, 1966 (during which he would have served had he not been exempted) any obligation of his to serve as a reservist had ceased to exist, because the effect of the order published by the Council of Ministers on the 14th February, 1966, and calling up reservists in his age group for the said period of six months, had expired. I cannot accept as correct this argument: One who is lawfully exempted from service on a temporary basis cannot claim that such exemption has eventually matured into a permanent exemption if he has been temporarily exempted for more than the period for which he would have served if he had not been so exempted. It is my definite view that in so far as the Applicant is concerned the said order of the Council of Ministers remained fully in force until, and came into operation as soon as, the period of his temporary exemption therefrom ended.

It has been, also, submitted by counsel for the Applicant that the order in question of the Council of Ministers, as made in 1966, had, in the circumstances of this case, served its purpose and had ceased to be of any effect before 1969, when the Applicant was required to enlist in accordance therewith; reference has been made, in this connection, to certain relevant principles of administrative law. Having considered these principles, as set out in, *inter alia*, Dendias on Administrative Law, 5th ed. Vol. A. p. 135 and in Kyriacopoulos on Greek Administrative Law, 4th ed. Vol. B. p. 401, I cannot agree that the application of such principles could lead me to the conclusion that in so far as the Applicant is concerned the aforesaid order of the Council of Ministers must be treated as being, in 1969, an extinct administrative act; it had to be duly applied to all those coming within its ambit, and the Applicant, being one of them, was bound to comply with it once the suspension of its effect regarding him had ended.

In particular, there is nothing before me to show that the circumstances, viz. activities directed against the independence and territorial integrity of the Republic, which are recited in the order concerned as the cause for making it, and are the same as some of the reasons for creating the National Guard in 1964 (see section 3 of Law 20/64), had ceased to exist by 1969. No evidence, at all, was adduced in this respect, and, on the contrary, the prolongation of the duration of normal military service to two years, by section 4 of the National Guard (Amendment) (No. 2) Law, 1967 (Law 70/67), is an indication of the continuation of the existence of the said circumstances.

For all the reasons set out in this judgment this recourse is dismissed, but I am making no order as to costs, because I think that this was an instance in which the Applicant was entitled to come to this Court in order to put his case before it.

Application dismissed.
No order as to costs.