IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PITTAS AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF INTERIOR,

Respondent.

(*Case No.* 198/70).

Military Service—Exemptions—National Guard Law, 1964 (*Law No.* 20 *of* 1964), *as amended—Liability to serve in the National Guard—Applicants serving in the Police Force when their age group was called up—Exempted from liability to serve under section* 4(3) *of the Law—But upon their dismissal or their resignation from the Police Force they became liable to serve—Sections* 4(5), 5(2), 15(1) *and* 30(3) *of the Law.*

Statutes—Construction of statutes—Principles applicable—Construction of section 4 *of the National Guard Law*, 1964 (*as amended*)*—Principle of non-retrospective operation of statutes.*

National Guard Law, 1964*—Military service—Exemption—Extent of—Section* 4(3) *of the Law—See* supra.

The main point in issue in this case is whether or not the applicants, having already served in the Police Force of the Republic for a number of years and having resigned therefrom, continued to enjoy the exemption from military service under section 4(3) of the relevant statute (*infra*). The Court held that the applicants were no longer entitled to such exemption from the moment they have ceased to serve in the Police Force.

On June 2, 1964, the National Guard Law, 1964 (Law No. 20 of 1964) was enacted providing for the establishment and organization of the National Guard. Before the enactment of this Law, the applicants had joined the Police Force of Cyprus ; and when their age group was called up for military service under the provisions of section 4 of the Law, they did not join the National Guard as they were exempted from liability to serve under the provisions of section 4(3) of the said Law. Some years later on, however, the applicants

resigned from the Police Force ; and the respondents on June 17, 1970, took their *sub judice* decision calling upon the applicants to enlist in the National Guard on July 20, 1970. It was argued on behalf of the applicants that in the circumstances they were exempted from military service, because, on the true construction of section 4(3) of the statute, once they have served in the Police Force, they are no longer liable to enlist in the National Guard, no matter whether or not they remain in the Police Force.

Rejecting this argument, the Court dismissed the recourse, holding that the applicants were liable to enlist in the National Guard and that they were only exempted from military service so long as they had remained serving in the security forces of the Republic (the Police Force).

Dismissing the recourse, the Court :—

Held, (1). In the light of well settled principles governing the construction of statutes, I would state that the object of the legislature is clear, and that the liability for service in the National Guard falls on all citizens of the Republic with certain exceptions regarding, *inter alia*, age etc.

(2)(*a*) Taking into consideration all the sections of the Law, I am of the view that the proper construction of section 4(3) of the said Law is that only persons who remain still serving in the security forces of the Republic are exempted from the liability for military service, and not those who have terminated, or were dismissed from, such service.

(*b*) I am fortified in this view since nowhere is to be found in the said Law any provision to the effect that service in the security forces of the Republic is to be taken into consideration against the period of military service. Moreover, if that was the intention, the legislature, in my view, would have provided for such provision in clear and unambiguous language.

(*c*) I would further point out that members of the security forces whose services are terminated are not treated as reservists (cf. section 15(1) of the Law ; cf. also section 30(3)).

(3) True, sub-section (5) of section 4 of the aforesaid Law No. 20 of 1964 (which was added by the amending Law No. 70 of 1967) provides that " as soon as the causes or conditions justifying the exemption under sub-section (3) cease to exist

the serviceman is bound to attend in order to perform or complete his term of service. Anyone failing to do so commits an offence contrary to section 22(1)(a) of the Law". I Would venture the opinion that, by the enactment of this sub-section (5) the legislature apparently intended it not to alter the provisions of section 4 regarding the liability for military service, but only to bring home specifically the provisions of section 4(3) (*supra*) of the Law, by reminding them that every serviceman has a duty to enlist for military service or to complete his service, and failing that, they were liable to penal consequences.

Recourse dismissed.
No order as to costs.

Recourse.

Recourse against the decision of the respondent calling upon the applicants to enlist in the National Guard.

L. Clerides, for the applicants.

Cl. Antoniades, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :—

HADJIANASTASSIOU, J. : In these proceedings, under Article 146 of the Constitution, the applicants seek a declaration that the decision of the respondent dated June 17, 1970, calling upon the applicants to enlist in the National Guard on July 20, 1970, is null and void and of no effect whatsoever. On June 2, 1964, the National Guard Law, 1964, (Law No. 20 of 1964) was enacted providing for the establishment and organization of the National Guard. Section 3 which provides for the establishment and composition of the force is in these terms :—

" 3 (1) The Council of Ministers may, when it considers it expedient because of a threatened invasion or any activity directed against the independence or the territorial integrity of the Republic or threatening the security of life or property, proceed to the establishment of a force, to be called ' National Guard ', with the object of aiding the army of the Republic or its security forces or both in all measures required for its defence.

(2) Subject to the provisions of section 10, the Force shall consist of citizens of the Republic who

are liable to serve and who may be called out for service under the provisions of this Law and be composed of officers and warrant officers, regular, on probation and auxiliary, and other ranks comprising servicemen and service volunteers.

(3) The Council of Ministers may from time to time prescribe the strength of the Force in officers and other ranks."

Who are liable to serve in the Force is provided in section 4 (1) of the law. All the applicants, before the enactment of this law, had joined the police force of Cyprus, and when their age group was called up for military service under the provisions of section 4 of the said law, they did not join the Force as they were exempted from the liability to serve under section 4 (3).

Some years later on, however, for reasons which are not before this Court, all the applicants, except one, *viz.* Mr. Panikos Orphanides, (No. 10 on schedule 'A' attached to the recourse) (who was dismissed) resigned from the police force. *Exhibit* 1 shows the date on which each applicant had joined the police force, the period of years of service and the date of resignation (or dismissal).

On the hearing of this recourse, May 6, 1971, counsel for the applicants put forward three propositions to which counsel for the respondent did take exception. The first proposition was that the decision of the respondent was taken contrary to the provisions of section 4 of our law, because persons serving in the security forces of the Republic at the time of the call-up for service in the National Guard are exempted from service. That proposition is clearly, in my view, right because section 4 (3) of the law in imperative language says so. The second proposition was that, because a member of the security forces on a later date resigned or was dismissed from the force, it does not make him liable to enlist retrospectively, as on a proper construction of section 4 of the law, if a person has served in the security forces he is entitled to exemption from service. With due respect to counsel, that proposition is not right. It is well settled that a statute is the will of the legislature, and the fundamental rule of interpretation, to which all others are subordinate, is that a statute is to be expounded according to the intent of those who made it. If the words of the statute are in themselves precise and unambiguous, no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such

case best declaring the intention of the legislature. The object, of course of an interpretation of a statute is to determine what intention is conveyed, either expressly or impliedly, by the language used, so far as is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it.

In the light of these principles, I would state that the object of the legislature is clear, and that the liability for service in the National Guard falls on all citizens of the Republic, and under the provisions of section 4 (1), all citizens of the Republic shall, from the first day of January of the year in which they complete the 18th year of their age and until the first day of January of the year in which they complete the 50th year of their age, are subject to the provisions of this law and liable to serve in the Force. Our law was mainly modelled on the lines of the Greek Military Code. See also on the question of military service *Svolos* and *Vlachos* on the then Constitution of Greece, (1954) Vol. A at pp. 261 *et seq.* which makes it obligatory on every Greek citizen who is able to carry arms to contribute to the defence of his Country. The position of course in England has not changed regarding the army in time of peace and Dicey on the Law of the Constitution, 9th edn. pp. 297–298, thus described the dilemma with which the people of that Country were faced : " With a standing army the country could not, they feared, escape from despotism ; without a standing army the country could not, they were sure, avert invasion ; the maintenance of the national liberty appeared to involve the sacrifice of national independence ". The solution was found in the Mutiny Act, 1688.

Taking into consideration all the sections of the law, I am of the view that the proper construction of section 4 of the said law is that, only persons who remain still serving in the security forces of the Republic are exempted from the liability for military service, and not those who have terminated or were dismissed from such service. I am further fortified in this view since the liability for military service under section 5 (2) commences on the date of the serviceman's enlistment, which is the most crucial date, and not the date of call-up as counsel has argued. There is, of course, another stronger reason, because nowhere is to be found in the provisions of the said law that service in the security forces of the Republic is to be taken into consideration against the period of military service. Moreover, if that was the intention, the ligislature, in my view, would have provided for such provision specifically in clear

and unambiguous language. Cf. section 30 (3) of Laws 1964 to 1969, which provides that the period of service on the basis of the present section is taken into consideration towards the period of military service regarding the reservists. I would further point out that members of the security forces whose services were terminated are not treated as reservists. Cp. section 15 (1) of the law, regarding the composition of the service, which reads :—

"The reserve of the Forces shall consist of :—

(*a*) Those who have completed their term of service as provided in sections 5 and 12, being finally discharged from the Forces ;

(*b*) those who have served for more than six months in a regular Cyprus army or in a regular allied army in the last world war.

(2) All the above persons shall remain in the reserve until they attain the 50th year of their age."

In the circumstances, and for the reasons I have endeavoured to explain, I have reached the view that, the case of all the applicants, does not fall within the provisions of section 4 (3) of our law, and I would, therefore, dismiss this proposition of counsel.

The third proposition was that, (assuming I am wrong on the construction of the law) because sub-section 5 of section 4 was introduced into our law by Law 70 of 1967, it cannot operate retrospectively to affect the vested rights of the applicants before its enactment. I am in agreement with counsel that the principle of retrospective operation of laws as regards vested rights, (if that was the case) and I would state what has been said in a number of cases, that every statute which takes away or impairs vested rights acquired under existing laws or creates a new obligation or imposes a new duty or attaches a new disability in respect of transactions or considerations already passed, must be presumed, out of respect to the legislature, to be intended not to have retrospective operation. Regarding sub-section 5 of section 4, which as I said earlier was introduced into the law later on, it reads as follows :—

*«(5) Εὐθὺς ὡς οἱ λόγοι ἡ αἱ συνθῆκαι ὑφ' ἃς χωρεῖ ἡ ἐξαίρεσις δυνάμει τοῦ ἐδαφίου (3) παύσωσιν νὰ ὑφίστανται ὁ στρατεύσιμος ὑπέχει ὑποχρέωσιν ὅπως προσέλθῃ πρὸς ἐκπλήρωσιν ἢ συμπλήρωσιν τῆς θητείας. Ὁ παραλείπων νὰ πράξῃ τοῦτο διαπράττει ἀδίκημα δυνάμει τῆς παραγράφου (*a*) τοῦ ἐδαφίου (1) τοῦ ἄρθρου 22.»

* An English translation of this text appears at p. 386 *post*.

The question posed is, have the applicants acquired any vested rights before the enactment of this sub-section? The answer in my view, is clearly in the negative, because not only the applicants had not acquired any vested rights under section 4, but on the contrary, they were bound to serve and they were only exempted, so long as they had remained serving in the security forces of the Republic. However, irrespective of whether sub-section 5 is a retrospective piece of ligislation or an *ex post facto* legislation, it does not in any way affect the case of the applicants because, as I said earlier, the applicants had never acquired any vested rights before the enactment of this sub-section. I would, venture the opinion that, with the enactment of this sub-section, the legislature apparently intended it not to alter the provisions of section 4 regarding the liability for service in the Force, but only to bring home specifically to the persons who had stopped having the blessing of the provisions of section 4 (3) of the law, by reminding them that every serviceman had a duty to enlist for military service or to complete his service, and failing that, they were liable to penal consequences.

Pausing here for a moment, I would make this observation : That the legislature in enacting this law must have been aware of the gallant deeds of some of the members of the security forces during the tragic days of Cyprus, and that was perhaps the main reason why the police force were exempted from military service. No doubt the police force, because of its training to maintain law and order at home, they found themselves—among other citizens—in the front line defending their Country because of the recent events directed against the independence or the territorial integrity of the Republic. In the light of that observation, I feel that the legislature would perhaps find it possible to do justice to those members of the police force who joined the voluntary National Guard, by amending section 15 of the law so as to include them in the reserve of the Force.

Having reached the view that, under the provisions of the law, it falls on every citizen of the Republic generally, (subject to some exceptions) to serve his Country, I am of the opinion that, the decision of the respondent to call upon the applicants to enlist in the National Guard is neither contrary to any of the provisions of the Constitution or of any law nor is it made in excess or in abuse of powers vested in such organ. I would, therefore, dismiss this recourse, but in view of the fact that this is the first case of this nature, I would not make an order for costs against the applicants.

Application dismissed.
No order as to costs.

* This is an English translation of the Greek text appearing at p. 384 *ante*, as prepared by the Registry.

"As soon as the causes or conditions justifying the exemption under section 3 cease to exist the serviceman is bound to attend in order to perform or complete his term of service. Any one failing to do so commits an offence contrary to paragraph (*a*) of section 22 (1)".