

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ARISTIDES D. MOSCHOVAKIS,

Applicant.

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR,

Respondent.

—
ARISTIDES D.
MOSCHOVAKIS
v.
REPUBLIC
(MINISTRY OF
INTERIOR)

(Case No. 492/73).

Military Service—Double nationality—Citizen of the Republic of Cyprus and citizen of Greece—Liable to military service under section 4 of the National Guard Laws 1964–1969—Cf. further infra.

Citizenship—Double citizenship or double nationality—Does not entail exemption from military service under the aforesaid Laws—Cf. supra; cf. further infra.

“Citizen of the Republic”—Section 3 of the Republic of Cyprus Citizenship Law, 1967 (Law 43/1967)—And section 2 (2) (b) of Annex ‘D’ to the Treaty of Establishment of the Republic of Cyprus.

Double nationality—Citizen of the Republic and citizen of Greece—The fact that a citizen of Cyprus possesses double nationality makes no difference to the position relating to national (military) service—As he is in exactly the same position from an internal point of view as a person whose national status is solely that of a citizen of the Republic of Cyprus—With the exception that under section 7 (1) of the aforesaid Law 43/1967, such a person who is also a national of a foreign country can, when of full age and capacity, make a declaration of renunciation of citizenship of the Republic with resulting loss of citizenship—Cf. also supra; also infra.

Double nationality—Inconveniences resulting therefrom—Attempts to remedy them.—Convention on Certain Questions Relating to the Conflict of Nationality Laws and the Protocol relating to military

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obligations in certain cases of double nationality, concluded at the Hague Codification Conference, 1930—Binding on Cyprus—Article 8 of the Treaty of Establishment of the Republic of Cyprus (devolution clause)—Notice given on March 5, 1970 to the Secretary-General of the United Nations—Cf. Parry on Nationality and Citizenship Laws of the Commonwealth and the Republic of Ireland, at p. 127.

Nationality—Double nationality etc.—See supra passim.

Words and Phrases—“Citizen of the Republic” (of Cyprus)—Section 3 of the Republic of Cyprus Citizenship Law, 1967 (Law 43/1967)—And section 2 (2) (b) of Annex ‘D’ to the Treaty of Establishment of the Republic of Cyprus.

The question raised by this recourse is whether the applicant, who is a citizen of the Republic of Cyprus and a citizen of Greece as well, is liable in law to serve in the National Guard. The learned trial Judge held that he is so liable under section 4 (1) of the National Guard Law, 1964 (Law 20/1964).

The facts of the case are very briefly as follows:

The father of the applicant is a citizen of Greece and his mother a citizen of the Republic of Cyprus. The applicant was born in Limassol (Cyprus) on October 30, 1955. It is common ground that by virtue of section 2 (2) (b) of Annex ‘D’ to the Treaty of Establishment, he is a citizen of the Republic of Cyprus as “a person born in the Island of Cyprus on or after the 5th November, 1914”. The provisions of Annex ‘D’ have, in fact, been adopted as part of the definition of “citizen of the Republic” to be found in section 3 of the Republic of Cyprus Citizenship Law, 1967 (Law 43/1967). The applicant is at the same time a Greek citizen, being descended in the main line from a father of Greek citizenship, and was issued on June 15, 1973, with a Greek passport.

Section 4 (1) of the National Guard Law, 1964 (Law 20/1964) provides:

“4 (1) Subject to the provisions of such section (3) *all citizens of the Republic* shall be subject to the provisions of this Law and *liable to serve in the Force*”.

The learned Judge, dismissing the recourse, —

Held, (1) In my opinion, the fact that a citizen possesses double nationality makes no difference to the position relating

to military service, as he is in exactly the same position from an internal point of view, as a person whose national status is solely that of a citizen of the Republic of Cyprus, except that under section 7 (1) of the Republic of Cyprus Citizenship Law, 1967 (Law 43/1967), such a person who is also a national of a foreign country can, when of full age and capacity, make a declaration of renunciation of his citizenship of the Republic of Cyprus with resulting loss of such citizenship (*Chrysanthou v. The Police* (1970) 2 C.L.R. 95, *distinguished*).

(2) *Note:* After quoting a passage from Parry on *Nationality and Citizenship Laws of the Commonwealth and the Republic of Ireland*, at p. 127, (see *post* in the judgment):

The aforesaid passage bears out my approach to the present case. In my opinion, the applicant has been rightly considered as being liable to military service under section 4 of the National Guard Law, 1964, being a citizen of the Republic of Cyprus, his other citizenship having no significance in so far as national service here is concerned.

Recourse dismissed. No order as to costs.

Per Curiam: Inevitably inconveniences result from double nationality, and it was with the object of remedying this that the question was approached at the Hague Codification Conference of 1930. The Convention on Certain Questions Relating to the Conflict of Nationality Laws and the Protocol relating to military obligations in certain cases of double nationality concluded at that conference, were confirmed by the United Kingdom and extended to Cyprus before Independence (August 16, 1960). On the 5th of March 1970, the Republic of Cyprus informed the Secretary-General of the United Nations, who is their depositary, that it considers itself and continues to be bound by them, by virtue of the devolution clause of Article 8 of the Treaty of Establishment, and the Inheritance Rules of Public International Law.

Cases referred to:

Pitsillides v. The Republic (1973) 3 C.L.R. 15;

Chrysanthou v. The Police (1970) 2 C.L.R. 95.

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Recourse.

Recourse against the decision of the respondent whereby applicant was considered as being liable to military service under section 4 of the National Guard Laws, 1964-1969.

L. Clerides, for the applicant.

R. Gavrielides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

A. LOIZOU, J.: The question raised by this recourse is whether the applicant who is a citizen of the Republic of Cyprus, and a citizen of Greece, is, in law, liable to serve in the National Guard.

The father of the applicant is a citizen of Greece and his mother a citizen of the Republic of Cyprus. They lived in Egypt until 1955 when they came to Cyprus and have been residing here permanently ever since.

The applicant was born in Limassol on the 30th October, 1955, and it is common ground that by virtue of section 2 (2) (b) of Annex 'D' to the Treaty of Establishment, he is a citizen of the Republic of Cyprus as "a person born in the Island of Cyprus on or after the 5th November, 1914". The provisions of Annex 'D' have, in fact, been adopted as part of the definition of "citizen of the Republic" to be found in section 3 of The Republic of Cyprus Citizenship Law, 1967 (Law No. 43 of 1967). The applicant is at the same time a Greek citizen, having descended in the main line from a father of Greek origin, and was issued, on the 15th June, 1973, with a Greek passport.

On the 23rd July, 1973 the applicant enlisted in the National Guard in compliance with the call-up order made in respect of his class. He was treated as a citizen of the Republic and as such liable to national service, under section 4 (1) of the National Guard Law of 1964 (Law No. 20 of 1964), as amended, which section reads as follows:-

"4.- (1) Subject to the provisions of sub-section (3) all citizens of the Republic shall, from the first day of January of the year in which they complete the eighteenth year of their age and until the first day of January of the year in which they complete the fiftieth year of their age, be subject

to the provisions of this Law and liable to serve in the Force”.

There is no definition in the National Guard Laws for the expression “citizens of the Republic” and it should be considered as having the same meaning and effect as is given to it by Annex ‘D’ to the Treaty of Establishment and by The Republic of Cyprus Citizenship Law, 1967; and in so far as this case is concerned, by section 2 (2) (b) of Annex ‘D’ as incorporated in section 3 of Law 43 of 1967, as there is nothing that calls for modification, alteration, qualification of the language of this statutory provision.

In my opinion, the fact that a citizen possesses double nationality, makes no difference to the position relating to national service, as he is in exactly the same position from an internal point of view, as a person whose national status is solely that of a citizen of the Republic, except that under section 7 (1) of Law 43 of 1967, such a person who is also national of a foreign country can, when of full age and capacity, make a declaration of renunciation of citizenship of the Republic with resulting loss of such citizenship.

Inevitably, inconveniences result from double nationality, and it was with the object of remedying this that the question was approached at the Hague Codification Conference of 1930. The Convention on Certain Questions Relating to the Conflict of Nationality Laws and the Protocol relating to military obligations in certain cases of double nationality concluded at that conference, were confirmed by the United Kingdom and extended to Cyprus before Independence. On the 5th March, 1970, the Republic of Cyprus informed the Secretary-General of the United Nations, who is their depositary, that it considers itself and continues to be bound by them, by virtue of the devolution clause of Article 8 of the Treaty of Establishment and the Inheritance Rules of Public International Law.

The first convention expressly declares by Article 3 that a person having two or more nationalities may be regarded as its national by each of the States whose nationality he possesses. On the other hand, by the Protocol it was agreed that if a person with two or more nationalities possesses the effective nationality of one country, he shall be exempted from all military obligations in the other country or countries, subject to the possible loss of nationality in those countries (Article 1).

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The provisions of the Protocol were relied upon by a Cypriot with double nationality, in the case of *Pitsillides v. The Republic* (1973) 3 C.L.R. 15 for exemption from military service. I may usefully refer here to a passage from Parry on Nationality of Citizenship Laws of the Commonwealth and the Republic of Ireland, at p. 127, which reads:—

“ Though plural nationality is of no domestic significance except in so far as its possession enables the person concerned to divest himself of British nationality, it has considerable external significance in that it disentitles the United Kingdom to protect the person concerned against the State of his foreign nationality. As Drummond’s Case shows, this is a rule of some antiquity. It was, as has been seen, confirmed by the action taken at the Hague codification conference of 1930, the Convention on Certain Questions Relating to the Conflict of Nationality Laws embodying both that rule and the principle of British domestic practice that a plural national may be treated by a State of which he is a national as being in no different position from any other of its nationals except in regard to diplomatic protection and to renunciation of nationality. The conference also adopted a protocol as to the obligation of military service in cases of double nationality. This lays down the general rule that a plural national shall be exempt from liability to military service except to the State in which he is habitually resident and with which he is most closely connected, subject, however, to the right of any other State of which he is a national to deprive him of its nationality if he relies upon this exemption. It further provides without prejudice to this general rule, that a person who has under the law of any State the right to renounce nationality thereof on account of his plural status shall be exempt from military service therein during minority”.

The aforesaid passage bears out my approach to the present case.

For the above reasons I have reached the conclusion that the applicant has been rightly considered as being liable to military service under section 4 of the National Guard Laws, 1964 to 1969, being a citizen of the Republic, his other citizenship having no significance in so far as national service here is concerned.

Before concluding, I would like to say a word about the case of *Chrysanthou v. The Police* (1970) 2 C.L.R. 95 which has been cited by counsel for the applicant, as having, possibly, some bearing on the issue under consideration. In my view, that was a case turning on the interpretation of Article 11.2 (f) of the Constitution and to what extent the appellant in that case, who had both Cypriot and British citizenship, was entitled to the protection afforded by the said constitutional provision against arrest and detention for purposes of extradition and it did not purport to lay down any principle of law governing in general the position of persons with plural nationality and the manner they should be treated under any other law.

Finally, in view of the conclusions to which I have come on the substance of this recourse, it would have served no purpose if I raised, *ex proprio motu*, or reopen the case for argument, on the question whether this recourse was filed out of time or not.

In the result, the present recourse is dismissed with no order as to costs.

Application dismissed. No order as to costs.

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