

1978 May 15

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MIKIS L. ECONOMIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR,

*Respondent.*

(Case No. 18/77).

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5 *National Guard—Military Service—Exemption from—Application for exemption on ground of permanent residence abroad—Under s. 4 (3) (c) of the National Guard Laws—Rightly considered as an application for exemption under section 9 of the Law as the applicant, since he became a citizen of the Republic, never resided permanently abroad.*

10 *National Guard—Military Service—Exemption from—Advisory Committee—Set up under section 4 (4) of the National Guard Law, 1964 (Law 20/64 as amended by Law 14/66)—Whether entitled to advise the Minister that on the facts ascertained by them he could exercise his discretion and refuse application for exemption.*

15 *Administrative Law—Administrative decision—Due reasoning—Decision refusing application for exemption from Military service—Respondent Minister writing the word “No” on the report of Advisory Committee—But reasoning of the sub judge refusal appearing in the letter of the respondent to applicant’s father where the reasons for refusing application are clearly stated.*

20 The applicant was born on the 10th June, 1957 in Belgian Congo and in 1963 he came to Cyprus with his family and settled in Famagusta. In view of the fact that his father was a Cypriot, applicant became a citizen of the Republic of Cyprus. After the Turkish invasion the father decided to emigrate and

in August 1975 he went to Greece where, being an architect, he obtained employment in a technical office there. In June, 1976 the mother of the applicant and his younger sister joined the father in Greece. After the enlistment of the applicant in the National Guard on the 13th July, 1976 his father wrote a letter\* dated 31st August, 1976 to the respondent requesting the discharge of applicant from the ranks of the National Guard because the father has permanently emigrated to Greece. 5

The case of the applicant was examined by the Advisory Committee, set up under section 4 (4) of the National Guard Law, 1964 (Law 20/64 as amended by Law 14/66) which having accepted the facts as stated in the above letter reported that "on the basis of these facts a refusal to demobilize the son of the applicant may be based as there are no special circumstances justifying his demobilization". (See the relevant report at p. 161 *post*). The Minister wrote "No" at the bottom of the report and a reply was sent to applicant's father in the terms of the Committee's above report (see p. 162 *post*). Hence the present recourse. 10 15

Counsel for the applicant contended: 20

- (a) That the Advisory Committee misconceived the applicant's application which was for exemption from liability to serve in the National Guard by virtue of s. 4 (3) (c)\*\* of the Law, and considered it as an application for exemption under section 9 of the Law due to special circumstances. 25
- (b) That the Advisory Committee had no right to advise the Minister that on the facts found by them the Minister could refuse the application; and that once they ascertained the facts contained in the letter of applicant's father as true and correct, the only thing they could say was that the case of the applicant falls within section 4 (3) (c) of the Law, and nothing else. 30
- (c) That the *sub judice* decision was not duly reasoned as

\* Quoted at pp. 160-61 *post*.

\*\* Section 4 (1) (3) (c) provides: 4 (1) "Subject to the provisions of sub-section 3, all citizens of the Republic shall ..... be subject to the provisions of this law and liable to serve in the Force.  
(3) There shall be exempted from the liability under sub-section (1) (c) citizens of the Republic who permanently reside outside Cyprus".

the Minister made a note on the written advice to him by the Advisory Committee by writing "No" on it, and that the Minister gave no reasons for that.

5           *Held, dismissing the recourse* (1) that the applicant's application on the facts appearing in the letter of his father could not possibly be examined under section 4 (3) (c) of the Law as the applicant since he became a citizen of the Republic of Cyprus, never resided permanently abroad; and that, accordingly, the  
10           Advisory Committee having taken into consideration the wording of the letter, which was addressed to the Minister and prayed for the exercise of his discretion, rightly considered it as an application for exemption under section 9 of the Law.

15           (2) That the Advisory Committee were entitled under the Law to advise the Minister that on the facts ascertained by them the Minister could exercise his discretion and refuse the applicant's application on the ground that no special circumstances were put forward by the applicant in this case.

20           (3) That the word "No" written on the report of the Advisory Committee is to state the result of the application of the applicant; and that the reasoning of the decision appears in the letter of the respondent to the applicant's father dated 10th December, 1976, where it is clearly stated that the applicant's application cannot be acceded to due to the fact that there are  
25           no special circumstances justifying the demobilization of the applicant.

*Application dismissed.*

### **Recourse.**

Recourse against the decision of the respondent not to demobilize the applicant from the ranks of the National Guard.

30           *L. Clerides*, for the applicant.

*R. Gavrielides*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

35           MALACHTOS J. read the following judgment. The applicant, Michael (Mikis) L. Economides, in this recourse claims a declaration of the court that the act and/or decision of the respondent not to demobilize him from the ranks of the National Guard, communicated to his father by letter dated 10th De-

ember, 1976, should be declared *null* and *void* and of no effect whatsoever.

The relevant facts are the following:

The applicant was born on 10th June, 1957, in Belgian Congo and in 1963 came to Cyprus with his family and settled in Famagusta. In view of the fact that his father, Lambros Economides, was a Cypriot, the applicant became a citizen of the Republic of Cyprus. After the Turkish invasion the whole family fled to Limassol, where they lived until August, 1975, when the father decided to emigrate. He went to Greece on his own and being an architect obtained employment in a technical office there. His wife who comes from Greece stayed in Limassol with the applicant and her younger daughter as both children were attending school. In June, 1976, the mother of the applicant and his younger sister joined the father in Greece. The age of the applicant was called up for conscription by virtue of the decision of the Council of Ministers No. 13812 and dated 20th January, 1975, but due to the fact that at the time the applicant was still a student in secondary education his enlistment was postponed till the 13th July, 1976.

On the 31st August, 1976, the father of the applicant addressed from Athens to the respondent a letter, *Exhibit 2*, which reads as follows:

“ I request you to exercise your discretion and release my son Michael Lambrou Economides from the remaining of his service in the National Guard due to emigration. He was born on the 10th June, 1957 in Zair (former Belgian Congo), and obtained the Cyprus Nationality and citizenship in the year 1967, and he now serves in the National Guard since the 13th July, 1976, under rank No. 6237, in the First Company, 4th Regiment of ‘K.E.N.’ Larnaca. The reason why I request the discharge of my son is because since August, 1975, I have emigrated permanently to Greece, where I was joined by my wife Kalliopi and my daughter Regina-Antoinette and where I have secured permanent employment on very good terms.

The reasons which made me to emigrate to Greece and not to Australia, America or any other place, where I

could easily secure a permit for emigration are the following:

- 5 (a) I am a refugee from Famagusta, financially ruined, even captured as a prisoner of war by the Turkish invasion army;
- (b) my wife is a Greek subject with all elements of her property in Greece;
- (c) my mother is a Greek subject residing permanently in Greece;
- 10 (d) all the relatives of my wife and most of my own relatives are permanently settled in Greece;
- (e) I have been a permanent resident of Greece since 1939 where after completing my studies I was regularly working even during the last ten years
- 15 keeping my office and my residence in Athens;
- (f) the continuation of the higher education of my son Michael as well as the secondary education of my daughter Regina-Antoinette, of 14 years of age, and her higher education later.

20 I believe that the above reasons, professional, social and economic, would persuade you as well, that anybody in my position would have decided to emigrate permanently and would select Greece as the country of his emigration.

25 I hope that my application will be given favourable consideration, a course which has been followed in similar cases."

The case of the applicant was placed before the Advisory Committee, which is set up under section 4 (4) of the National Guard Law, 1964 (Law 20/64 as amended by Law 14/66), who

30 submitted to the respondent Minister its findings on 5th November, 1976, *Exhibit 3*, which reads:—

35 "The Committee having examined today the present case finds that the facts are as set out in the application dated 31st August, 1976, and that on the basis of these facts a refusal to demobilize the son of the applicant may be based as there are no special circumstances justifying his demobilization."

The Minister wrote "No" at the bottom of this report and as a result the letter, *Exhibit 1*, dated 10th December, 1976, was sent to the applicant's father. This letter reads as follows:

" I have been instructed to refer to your letter dated 31st August, 1976, by which you apply that your son Michael be discharged from the ranks of the National Guard due to special circumstances and to inform you that your application has not been possible to be acceded to, as from the examination of the facts of your case it resulted that there are no special circumstances justifying the demobilization of your said son."

The applicant then filed the present recourse.

The grounds of law on which the application is based, as stated therein, are the following:

- (a) Under the provisions of section 4 (3) of Law 20/64 (as amended by Laws 25/66 and 33/76) citizens of the Republic permanently residing outside Cyprus are exempt from service in the National Guard.
- (b) It is contended on the basis of the facts in support of the recourse that applicant is in law and in fact permanently residing outside Cyprus *i.e.* in Greece as well as his family and as such he should have been exempted from service with the National Guard and consequently that the decision challenged conflicts with the provisions of section 4 (3) of Law 20/64 and should be declared *null* and *void* and of no effect whatsoever.
- (c) It is also contended that the respondent's decision should be set aside as *null* and *void* and as it is not duly reasoned contrary to Article 29 of the Constitution.

Counsel for applicant argued that on the facts stated in *Exhibit 2* the letter of the father of the applicant dated 31st August, 1976, to the respondent Minister, which was accepted by the Advisory Committee as true and correct, the applicant ought to have been considered in Law under the provisions of section 4 (3) (c) of the National Guard Laws, as a citizen of the Republic permanently residing abroad, and as such entitled to be exempted from the obligation to serve in the National Guard. The said section is as follows:

5 “ 4 (1) Subject to the provisions of subsection 3, all citizens of the Republic shall, from the 1st day of January of the year in which they complete the 18th year of their age and until 1st January of the year in which they complete the 50th year of their age, be subject to the provisions of this law and liable to serve in the Force.

(2) .....

(3) There shall be exempted from the liability under subsection (1)

(a) .....

(b) .....

10 (c) citizens of the Republic who permanently reside outside Cyprus.”

15 Counsel for applicant also argued that the Advisory Committee misconceived the applicant’s application which was for exemption from liability to serve in the National Guard by virtue of section 4 (3) of the law, and considered it as an application for exemption under section 9 of the Law due to special circumstances. He also argued that the Advisory Committee, which is constituted under section 4 (4) of the Law as a facts finding committee, had no right to advise the Minister that on the facts found by them the Minister could refuse the applica-  
 20 tion. Once they ascertained the facts contained in *Exhibit 2* as true and correct, the only thing they could say was that the case of the applicant falls within section 4 (3) (c) of the Law, and nothing else.

25 I must say that I entirely disagree with these submissions of counsel. The applicant’s application on the facts appearing in *Exhibit 2* could not possibly be examined under section 4 (3) (c) of the Law as the applicant since he became a citizen of the Republic of Cyprus, never resided permanently abroad.

30 Therefore, the Advisory Committee taking into consideration the wording of *Exhibit 2*, which is addressed to the respondent Minister and prays for the exercise of the discretion of the Minister, rightly considered it as an application for exemption under section 9 of the Law.

35 The Advisory Committee were entitled under the Law to advise the Minister that on the facts ascertained by them the

Minister could exercise his discretion and refuse the applicant's application on the ground that no special circumstances were put forward by the applicant in this case.

The other argument of counsel for applicant is that the decision complained of is not duly reasoned as the Minister made a note on the written advice to him by the Advisory Committee by writing "No" on it, and that the Minister gave no reasons for that. 5

The short answer to this is that the word "No" written on the report of the Advisory Committee is to state the result of the application of the applicant. The reasoning of the decision appears in the letter of the respondents to the applicant's father dated 10th December, 1976, where it is clearly stated that the applicant's application cannot be acceded to due to the fact that there are no special circumstances justifying the demobilization of the applicant. 10 15

For the reasons stated above, this recourse fails.

There will be no Order as to costs.

*Application dismissed.*  
*No order as to costs.* 20