1978 June 27

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SPYROS A. MYRIANTHIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF INTERIOR AND DEFENCE,

Respondents.

(*Case No.* 14/77).

Statutes—Construction—Principles applicable—A statute is meant to be operative and workable—Interpretation thereof should be to secure this object—Construction of s. 15 (1) (*a*) *of the National Guard Law,* 1964 (*Law* 20/64 *as amended by Law* 44/65).

National Guard—Military service—Call up of a conscript, who is still doing his ordinary military service, for service as a reservist immediately after completion of his normal period of military service—Not precluded by s. 15 (1) (*a*) *of the National Guard Law,* 1964 (*Law* 20/64 *as amended by Law* 44/65)—*Section* 16 *of Law* 20/64.

National Guard Law, 1964 (*Law* 20/64)—*Construction of s.* 15 (1) (*a*) *of the Law as amended by Law* 44/65.

National Guard—Military service—Discharge of reservist under s. 9 (1) *of Law* 20/64 (*as amended by s.* 6 *of Law* 26/65)—*Is a matter of administrative discretion—Which may be exercised in a manner involving imposition of conditions required by the exigencies of the specific situation.*

Constitutional Law—Right to leave permanently or temporarily the territory of the Republic—Article 13.2 *of the Constitution—Conditional discharge from National Guard through granting of a "certificate of identity" instead of granting Cypriot passport—Amount to reasonable restrictions imposed in the course of the application of s.* 9(1) *of the National Guard Law,* 1964 (*Law* 20/64

as amended by Law 26/65)—And they are "reasonable restrictions" imposed by law in the sense of the said Article 13.2.

Administrative Law—Discretionary powers—Can be exercised by imposition of conditions.

Constitutional Law—Equality—Discrimination—Articles 6 and 28 of the Constitution—Discharging of conscripts from National Guard and allowing them to travel abroad by using their Cypriot passports—Subsequent introduction of measures of control, regarding purpose of travel, by allowing them to travel by use of a "certificate of identity" only—Laxity shown earlier in the exercise of such control does not amount to unequal treatment.

The applicant enlisted for Military service on November 13, 1974 and was about to be discharged on November 12, 1976, after serving his twenty-four months' normal period of military service.

On September 16, 1976, the Council of Ministers, acting under section 16 of the National Guard Law, 1964 (Law 20 of 1964), decided to call up for service as reservists in the National Guard, immediately after the completion of their period of military service envisaged by the Law, all the conscripts of the class to which applicant belonged.

Whilst serving as a reservist the applicant was on December 1, 1976 discharged from the ranks of the National Guard, by a decision of the respondent Minister of Interior and Defence, taken under s. 9(1) of Law 20/64, as amended by s. 6 of Law 26/65, for the purpose of proceeding to Greece in order to study law at Athens University. This discharge was not absolute, but conditional, in the sense that he was required to serve in the National Guard in order to complete the remainder of his period of service as a reservist, either at the conclusion of his studies or, in case he would come to Cyprus, during the Summer holidays. Another condition that was imposed was the issue of a "certificate of identity", for the purpose of only one return journey to Greece, instead of being allowed to travel in the ordinary course by using his passport as a citizen of Cyprus.

In a recourse challenging the above decisions counsel for the applicant contended:

(1) That the decision to call applicant for further service as

a reservist was taken contrary to s. 15(1)(a)* of Law 20/64, as amended by s. 5 of Law 44/65, in that it is not possible to call up a conscript for service as a reservist in the National Guard before he has completed his normal period of military service.

In this connection counsel laid stress on the words "those who have completed" and "discharged definitely," appearing in s. 15(1), in order to support the argument that this section envisages a call up of a reservist *only after* he had completed his normal period of military service and has been definitely discharged from the National Guard.

(2) That when a conscript is discharged in the exercise of powers under the said s. 9(1) his discharge has to be unconditional.

(3) That the conditional discharge granted to him was incompatible with, and excluded by, the terms on which a previous recourse** of the applicant was withdrawn.

(4) That after his conditional discharge the applicant was absolved of any obligation to serve further, even as a reservist.

In making this contention counsel relied on the Opposition which mentioned that the Council of Ministers, by its decision No. 15574 of February 3, 1977, had decided to discharge from the National Guard, between February 15 and 20, 1977 all those who had enlisted with the 1974 B' class (*i.e.* applicant's class) of conscripts in November, 1974, and who had since then been serving continuously.

(5) That the conditional discharge and the issue of a "certifi-

* Section 15(1)(a) provides that the reserve of the National Guard is composed, *inter alia*, of those who have completed their normal military service under the relevant legislative provisions and are discharged definitely from the National Guard.

** By means of this recourse applicant had challenged the refusal to discharge him from the ranks of the National Guard. Counsel for the respondents in this recourse declared, on November 17, 1976, that all conscripts—including the applicant—who had been granted admission by universities ..... in any country ..... would be discharged "without conditions"; eventually applicant was discharged conditionally as aforesaid.

cate of identity" entail infringements of Article 13.2* of the Constitution.

(6) That the applicant is the victim of unequal treatment, contrary to Articles 6 and 28 of the Constitution, in that other conscripts who were discharged from the ranks of the National Guard and were allowed to travel abroad for the purpose of commencing their University studies were not deprived of the opportunity of travelling on the strength of their Cypriot passports and they were not obliged to travel by using only a "certificate of identity".

Held, dismissing the recourse:

(1) That bearing in mind that "a statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable" (see *Whitney* v. *Commissioners of Inland Revenue* [1926] A.C. 37 at p. 52), it would obviously render the said section 15 (1) (a) unworkable by limiting its ambit to an unreasonable and utterly inconsistent with the object of the relevant legislation extent, if this Court were to interpret it as suggested by counsel for the applicant (see also, *Murray* v. *Commissioner of Inland Revenue* [1918] A.C. 541 at p. 553); that there is nothing in section 15(1) which prevents the Council of Ministers from calling up as reservists for further service in the National Guard, in the exercise of powers under s. 16 of the relevant legislation, conscripts who are still doing their ordinary military service; and that, accordingly, there is nothing contrary to law in so far as the relevant decision of the Council of Ministers is concerned. (pp. 261–62 *post*).

(2) That since the discharge of a conscript under the said section 9(1) is a matter of administrative discretion it follows, inevitably, that, depending on the circumstances of each particular case, such discretion may be exercised in a manner involving the imposition of conditions required by the exigencies of the specific situation.

(3) That from a perusal of the record of the said previous recourse and of the material before this Court, it is shown that

* Article 13.2 provides: "Every person has the right to leave permanently or temporarily the territory of the Republic subject to reasonable restrictions imposed by law".

the expression "without conditions", in the context of the circumstances in which that case was withdrawn and the applicant was discharged from the ranks of the National Guard, related to matters such as the knowledge of the language of the foreign country where a conscript intending to commence university studies had secured admission by a university, and it did not, in any way, exclude a condition concerning the obligation to complete his service in the National Guard as a reservist in the manner required of him by means of the conditional discharge eventually granted to the applicant.

(4) That the decision of the Council of Ministers, referred to in the Opposition, cannot be treated as being applicable to the applicant because when it was taken by the Council of Ministers he had not been serving continuously since November 1974, in that he had been discharged already conditionally on December 1, 1976, and that, in any event, even if this decision of the Council could be taken to cover the case of the applicant too, it can only be construed as limiting the period during which he would have to serve further as a reservist on the basis of the terms set out in his conditional discharge, in the sense that he would not have to serve longer than it was necessary to complete a period of actual service commencing in November 1974 and ending in February 1977 (p. 264 *post*).

(5) That the conditions imposed by means of the conditional discharge of the applicant and the restrictions placed on his freedom to travel abroad, through being granted a "certificate of identity" instead of being allowed to use his Cypriot passport, amount to reasonable restrictions imposed in the course of the application of the National Guard Legislation, and, in particular, of section 9 (1) of Law 20/64, as amended by Law 26/65; that they are, therefore, "reasonable restrictions imposed by Law" in the sense of Article 13.2 of the Constitution; and that, accordingly, there has not occurred on this occasion any infringement of the said Article.

(6) That though it is correct that conscripts who had enlisted together with the applicant and who were discharged in September or October 1976, for the purpose of commencing their university studies abroad, were allowed to travel by using their Cypriot passports, as it appears from the evidence, the measure of making such conscripts, to travel by using a "certificate of identity" and not their Cypriot passports, was introduced in

relation to those who were discharged as from November 30, 1976, onwards, for the purpose of enabling the Government to exercise better control over them regarding the purpose of travelling abroad; that any laxity shown in connection with the exercise of such control prior to November 30, 1976, and the subsequent introduction of measures intended to close any loopholes for those who might take advantage of the arrangements for the premature discharge of conscripts for university studies abroad cannot lead to the conclusion that the applicant was rendered the victim of unequal treatment detrimental to him.

Application dismissed.

Cases referred to:

Murray v. *Commissioner of Inland Revenue* [1918] A.C. 541 at p. 553;

Whitney v. *Commissioner of Inland Revenue,* [1966] A.C. 37 at p. 52.

Recourse.

Recourse against the decision of the respondents to call up applicant for further service, as a reservist, in the National Guard after the expiry of the normal period of his military service and against the decision by means of which he was discharged conditionally while serving as a reservist.

A. Myrianthis, for the applicant.

A. Frangos, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. The applicant complains against a decision (No. 15.243) of the respondent Council of Ministers, of September 16, 1976, by means of which he was called up for further service, as a reservist, in the National Guard, after the expiry of the normal period of his military service, together with other conscripts belonging, like him, to the 1974Β'/ΕΣΣΟ class. He, also, complains against decisions of the respondent Minister of Interior and Defence by means of which he was granted only a temporary discharge from the ranks of the National Guard on December 1, 1976, and was issued with a "certificate of identity" on December 2, 1976, for the purpose of only one return journey

to Greece, instead of being allowed to travel in the ordinary course by using his passport as a citizen of Cyprus.

The said decision of the Council of Ministers (*exhibit B*) reads as follows:-

"Τὸ Συμβούλιον ἀπεφάσισεν ὅπως καλέσῃ, δυνάμει τοῦ ἄρθρου 16 τῶν περὶ τῆς 'Εθνικῆς Φρουρᾶς Νόμων τοῦ 1964 ἕως 1976, δι' ἐφεδρικὴν ὑπηρεσίαν ἐν τῇ 'Εθνικῇ Φρουρᾷ, εὐθὺς μετὰ τὴν συμπλήρωσιν τῆς ὑπὸ τοῦ Νόμου προβλεπομένης θητείας αὐτῶν, πάντας τοὺς στρατευσίμους τῆς κλάσεως 1974'/ΕΣΣΟ".

("The Council decided to call up, under section 16 of the National Guard Laws, 1964 to 1976, for service as reservists in the National Guard, immediately after the completion of their period of military service envisaged by the Law, all the conscripts of class 1974B'/ESSO").

The applicant had been called up to do his military service in July 1974, but, due to the intervening coup d'etat and the Turkish invasion of Cyprus in mid July 1974, he did not enlist until November 13, 1974.

Under section 5 (1) of the National Guard Law, 1964 (Law 20/64), as amended by means of section 4 of the National Guard (Amendment) (No. 2) Law, 1967, (Law 70/67), the normal period of the military service of the applicant was twenty-four months and, therefore, it actually expired on November 12, 1976.

The decision of the Council of Ministers to call him up for further service as a reservist, together with the rest of the conscripts in his class, was taken under section 16 of Law 20/64, on September 16, 1976.

Section 15(1)(a) of Law 20/64, as amended by means of section 5 of the National Guard (Amendment) (No. 3) Law, 1965 (Law 44/65), provides that the reserve of the National Guard is composed, *inter alia*, of those who have completed their normal military service under the relevant legislative provisions, and are discharged definitely from the National Guard; the material part of its Greek text reads as follows:-

"(1) Τὴν ἐφεδρείαν τῆς Δυνάμεως ἀποτελοῦσι-

(α) οἱ ἐκπληρώσαντες τὴν ὑποχρέωσιν θητείας αὐτῶν

ώς προνοεῖται ἐν τοῖς ἄρθροις 5 καὶ 12 ἀπολυόμενοι ὁριστικῶς τῆς Δυνάμεως".

It has been the contention of counsel for the applicant that the aforesaid decision of the Council of Ministers was taken contrary to law in that it is not possible to call up a conscript for service as a reservist in the National Guard before he has completed his normal period of military service, as has been done with the class of conscripts to which the applicant belongs; in this respect stress was placed on the words "ἐκπληρώσαντες" ("those who have completed") and "ἀπολυόμενοι ὁριστικῶς" ("discharged definitely") in order to support the argument that section 15(1) (a), above, envisages a call up of a reservist *only after* he has completed his normal period of military service and has been definitely discharged from the National Guard.

In *Murray* v. *Commissioners of Inland Revenue*, [1918] A.C. 541, Lord Dunedin stated (at p. 553):-

> " It is our duty to make what we can of statutes, knowing that they are meant to be operative, and not inept, and nothing short of impossibility should in my judgment allow a Judge to declare a statute unworkable."

Lord Dunedin reverted to the same principle in the later case of *Whitney* v. *Commissioners of Inland Revenue*, [1926] A.C. 37, and said the following (at p. 52):-

> " A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable."

It would obviously render section 15 (1) (a) of Law 20/64, as amended by Law 44/65, unworkable, by limiting its ambit to an unreasonable and utterly inconsistent with the object of the relevant legislation extent, if I were to interpret it as suggested by counsel for the applicant.

In my opinion, there is nothing in it which prevents the Council of Ministers from calling up as reservists for further service in the National Guard, in the exercise of the powers under section 16 of the relevant legislation, conscripts who are still doing their ordinary military service; and I cannot accept

that the words "ἐκπληρώσαντες" and "ἀπολυόμενοι ὁριστικῶς" have been used by the Legislature so literally as to exclude such a course; I am of the view that they were merely used to convey the notion that a reservist is, as a rule, a conscript who has completed his normal period of military service and at the end of it has been "definitely discharged" from the ranks of the National Guard, in the sense that he is no longer bound to serve except as a reservist.

The premature call-up of a conscript to serve in the National Guard as a reservist after completion of his normal period of military service does not prevent him, in any way, from being "definitely discharged" from the National Guard in the aforementioned sense even if, and when, he is continuing to serve as a reservist.

I, therefore, find nothing contrary to law in so far as the relevant decision of the Council of Ministers is concerned.

While serving as a reservist the applicant was discharged from the ranks of the National Guard, by a decision of the respondent Minister of Interior and Defence, for the purpose of proceeding to Greece in order to study law at Athens University.

He was so discharged under section 9 (1) of Law 20/64, as amended by means of section 6 of the National Guard (Amendment) Law, 1965 (Law 26/65), which enables the Council of Ministers to discharge conscripts for special reasons; the relevant powers of the Council of Ministers had been delegated to the respondent Minister by a decision of the Council of Ministers dated November 4, 1976 (see *exhibit M*).

The discharge of the applicant was not absolute, but conditional, in the sense that he was required to serve in the National Guard in order to complete the remainder of his period of service as a reservist, either at the conclusion of his studies or, in case he would come to Cyprus, during the summer holidays (see *exhibit A*).

It has been contended by counsel for the applicant that when a conscript is discharged in the exercise of the powers under the aforesaid section 9(1) of the relevant legislation his discharge has to be unconditional and, therefore, no condition,

such as the one mentioned above, could have been imposed in the case of the applicant.

I cannot share this view because since the discharge of a conscript under the said section 9(1) is a matter of administrative discretion it follows, inevitably, that; depending on the circumstances of each particular case, such discretion may be exercised in a manner involving the imposition of conditions required by the exigencies of the specific situation.

Another submission of counsel for the applicant has been that the conditional discharge granted to him, as aforesaid, was incompatible with, and excluded by, the terms on which a previous recourse, No. 265/76, of the applicant was withdrawn; by such recourse he had challenged the refusal to discharge him from the ranks of the National Guard; and the respondents were the same as in the present case.

It is true that on November 17, 1976, counsel appearing for the respondents in case 265/76 had declared that all conscripts —including, of course, the present applicant—who had been granted admission by universities or other equivalent institutions in any country for university studies would be discharged "without conditions" on November 30, 1976; and, eventually, the applicant was discharged on December 1, 1976, but he was granted, as already stated, only a conditional discharge (see *exhibit A*).

A perusal of the record of case 265/76 (see *exhibit* D) shows that the expression "without conditions", in the context of the circumstances in which that case was withdrawn and the applicant was discharged from the ranks of the National Guard, related to matters such as the knowledge of the language of the foreign country where a conscript intending to commence university studies had secured admission by a university, and it did not, in any way, exclude a condition concerning the obligation to complete his service in the National Guard as a reservist in the manner required of him by means of the conditional discharge eventually granted to the applicant; this is, also, clear from a letter of the respondent Minister of Interior and Defence, dated November 23, 1976, which is to be found in a bundle of relevant correspondence which was produced during the proceedings in the present case (see *exhibit I*); there-

fore, the submission in this connection of counsel for the applicant cannot be sustained.

Applicant's counsel has, next, relied on paragraph 5 of the Opposition, filed by the respondents in this case, in order to argue that after his conditional discharge the applicant was absolved of any obligation to serve further, even as a reservist, in the National Guard. As a matter of fact in the said paragraph 5 it is mentioned that the Council of Ministers, by its decision No. 15574 of February 3, 1977, had decided to discharge from the ranks of the National Guard, between February 15 and 20, 1977, all those who had enlisted with the 1974 B' class of conscripts in November 1974, and who had since then been serving continuously.

In the first place, this decision cannot be treated as being applicable to the applicant because when it was taken by the Council of Ministers he had not been serving continuously since November 1974, in that he had been discharged already conditionally on December 1, 1976; but, in any event, even if this decision of the Council could be taken to cover the case of the applicant too, it can only be construed as limiting the period during which he would have to serve further as a reservist on the basis of the terms set out in his conditional discharge, in the sense that he would not have to serve longer than it was necessary to complete a period of actual service commencing in November 1974 and ending in February 1977; that is having been conditionally discharged on December 1, 1976, he would still have to serve as a reservist for a period equal to that commencing on that date and ending on February 15, 1977.

Regarding the conditional discharge of the applicant, which was granted to him as aforesaid on December 1, 1976, and the issue to him of a "certificate of identity" for the purpose of travelling to Greece as a student, it has been submitted by his counsel that they entail infringements of Article 13 of the Constitution, paragraph 2 of which reads as follows:-

> "2. Every person has the right to leave permanently or temporarily the territory of the Republic subject to reasonable restrictions imposed by law."

I am of the view that the conditions imposed by means of the conditional discharge of the applicant and the restrictions

placed on his freedom to travel abroad, through being granted a "certificate of identity" instead of being allowed to use his Cypriot passport, amount to reasonable restrictions imposed in the course of the application of the National Guard Legislation, and, in particular, of section 9 (1) of Law 20/64, as amended by Law 26/65, and that they are, therefore "reasonable restrictions imposed by law" in the sense of Article 13.2 of the Constitution; consequently, there has not occurred on this occasion any infringement of the said Article.

Counsel for the applicant has contended, also, that the applicant is the victim of unequal treatment, contrary to Articles 6 and 28 of the Constitution, in that other conscripts who were discharged from the ranks of the National Guard and were allowed to travel abroad for the purpose of commencing their university studies were not deprived of the opportunity of travelling on the strength of their Cypriot passports and they were not obliged to travel by using only a "certificate of identity". It is correct that conscripts who had enlisted together with the applicant and who were discharged in September or October 1976, for the purpose of commencing their university studies abroad, were allowed to travel by using their Cypriot passports; but, as it appears from the evidence adduced during the hearing of this case, and, particularly, that of witness C. Matsoukaris, the measure of making conscripts, who had been discharged from the ranks of the National Guard for the purpose of university studies abroad, to travel by using a "certificate of identity" and not their Cypriot passports, was introduced in relation to those who were discharged as from November 30, 1976, onwards, for the purpose of enabling the Government to exercise better control over them, in the sense that it could be ensured that they would go abroad for the purpose of university studies only and for no other reason. I do not think that any laxity shown in connection with the exercise of such control prior to November 30, 1976, and the subsequent introduction of measures intended to close any loopholes for those who might take advantage of the arrangements for the premature discharge of conscripts for university studies abroad in order to evade the obligations flowing from their conditional, in the circumstances, discharges, can lead to the conclusion that the applicant, who appears to be a bona fide student at Athens University, and for whom it was sufficient, for the purpose of proceeding to

Greece for university studies, to have a "certificate of identity", and who would not have been better served in this respect if he had been allowed to use his Cypriot passport, was rendered the victim of unequal treatment detrimental to him.

I have dealt, in this judgment, with the main submissions made by counsel for the applicant; and I would like to add that any other subsidiary point which was not referred to directly may be deemed to be covered by the contents of this judgment in relation to the said main issues.

For the reasons given hereinabove the recourse of the applicant fails; but I have decided to make no order as to costs against him.

Application dismissed.
No order as to costs.