

1979 February 17

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SERGHIOS A. FLORIDES, A MINOR, THROUGH
HIS FATHER AND NATURAL GUARDIAN ANDREAS
FLORIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR,

Respondent.

(Case No. 494/73).

Administrative Law—Executory acts—Applicant liable to serve in the National Guard in the ordinary course of events—Maintaining that he is not so liable and applying for respondent's confirmation to this effect—Respondent's replies rejecting applicant's submission—Are not executory acts but merely "opinions" ("gnomodotisis")—Whether an act which is not "executory" when the application for review is filed may acquire that character as a result of a supervening event.

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The applicant, a citizen of the Republic, was liable to enlistment in the National Guard in the ordinary course of events. As he maintained that due to the provisions of section 4(3)(e) of the National Guard Law, 1964 (Law 20/64) he was not so liable, he applied, through his advocate, to the respondent Ministry, by letter dated July 26, 1973, for a confirmation that he was not in law bound to serve in the National Guard being so exempted on the basis of the aforesaid provisions. Respondent replied by letter dated September 17, 1973 that he did not agree with the above submission of applicant's counsel. Applicant applied for a due reasoning of the refusal contained in the letter of September 17, 1973 and respondent by his letter of October 11, 1973, replied that applicant could not be exempted

and relied on the grammatical and logical interpretation of the aforesaid section.

Hence the present recourse.

In the opposition the respondent raised the point that “the act and/or decision challenged is not an executory one”; but he withdrew it at the commencement of the hearing because “when the opposition was filed applicant had not been called up; but in the meantime he has”. 5

Held, (1) that the point raised in the opposition is clearly a valid one: the respondent’s letters of September 17 and October 11, 1973 were, in the circumstances of this case, merely “opinions” (“gnomodotisis”), as to which see Stasinopoulos, the Law of Administrative Disputes, p. 173. 10

(2) That the withdrawal by respondent’s counsel of the above point does not make any difference as no authority has been cited, and this Court is not aware of any, that a matter of complaint which is not “executory” when the application for review is filed may acquire that character as a result of a supervening event; and that, accordingly, the recourse must be dismissed. 15 20

Application dismissed.

Recourse

Recourse against the refusal of the respondent to exempt applicant from military service in the National Guard.

L. N. Clerides, for the applicant. 25

R. Gavrieldes, Counsel of the Republic, for the respondent.

Cur. adv. vult.

STAVRINIDES J. read the following judgment. This is an application for a declaration that “the act and or decision of the respondent communicated to applicant by letters dated September 17 and October 11, 1973, that applicant is not exempted from military service in the National Guard and that he is in law bound to serve in the National Guard should be declared null and void and of no effect whatsoever.” 30

The applicant, a citizen of the Republic, born on November 14, 1956, is the eldest son of a father who is in receipt of a di- 35

sablement pension granted to him under the provisions of the Pensions and Extraordinary Gratuities to the Dependants of the Fallen and the Victims of the Struggle and its Invalids Fund Law, No. 4 of 1962, of the Greek Communal Chamber.

5 Paragraphs 2 to 6 on the indorsement on the application read as follows:

10 “2. As applicant would be liable to enlistment in the National Guard in the ordinary course of events but as he maintains that due to the provisions of s.4(3)(e) of Law 20/64 he is not so liable, he applied through his advocate to respondent by letter dated July 26, 1973, for a confirmation of the appropriate authority that he is not in law bound to serve in the National Guard being so exempted on the basis of the aforesaid provisions.

15 3. Respondent did on September 17, 1973, reply to applicant that he does not agree with the submission of applicant’s counsel.

20 4. As the reply of respondent was not duly reasoned applicant did on October 5, 1973, apply for due reasoning of the refusal of the respondent contained in his letter dated September 17, 1973.

25 5. Respondent by his letter of October 11, 1973, replied again that applicant could not be exempted and relied on the grammatical and logical interpretation of the aforesaid section.

6. For the reasons advanced above and on the basis of the grounds of law it is contended that respondent’s act and/or decision should be set aside and declared null and void and of no effect whatsoever.”

30 In the opposition the respondent, as well as relying on a particular construction of s.4(3)(e) of the National Guard Law, 1964, as amended by Laws 26 and 27 of 1965, raised the point that “the act and/or decision challenged is not an executory one.” In my view the point is clearly a valid one: the respondent’s letters of September 17 and October 11, 1973 (which, incidentally, were not, as they ought to have been, filed together with the application as *exhibits* thereto) were, in the circum-

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stances of this case, merely "opinions" ("gnomoditisis"), as to which see Stasinopoulos, *The Law of Administrative Disputes*, p. 173.

At the commencement of the hearing learned counsel for the respondent said, "I withdraw para. 1 of my grounds of law (i.e. the point just dealt with). It was based on the fact that when the opposition was filed applicant had not been called up; but in the meantime he has." Does this make any difference? No authority has been cited, and I am not aware of any, that a matter of complaint which is not "executory" when the application for review is filed may acquire that character as a result of a supervening event.

It follows that the application must fail.

One other matter was in issue at the hearing, namely the meaning of s.4(3)(e) above-mentioned and its applicability to the facts of this case. In view of the conclusion at which I have arrived as to the effect of the non-executory nature of the matters complained of I consider it quite unnecessary to discuss that provision.

Application dismissed without costs. 20

*Application dismissed
without costs.*