

1979 March 21

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARINOS PIERI, THROUGH HIS FATHER AND  
NATURAL GUARDIAN,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH THE  
MINISTER OF INTERIOR AND DEFENCE,

*Respondent.*

(Case No. 494/78).

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*Constitutional Law—Constitutionality of Legislation—Section 2(b)  
of the National Guard (Amendment) Law, 1978 (Law 22/78)—  
Unconstitutional as offending Article 198 of the Constitution—  
Annex D to the Treaty of Establishment of the Republic of Cyprus.*

- 5 *National Guard (Amendment) Law, 1978 (Law 22/78)—Section 2(b)  
unconstitutional as offending Article 198 of the Constitution—  
Annex D to the Treaty of Establishment of the Republic of Cyprus.*

10 The applicant is a British subject and is not considered as a  
citizen of the Republic either under Annex D of the Treaty of  
Establishment of the Republic of Cyprus or the Republic of  
Cyprus Citizenship Law of 1967 (Law 43 of 1967). It was com-  
mon ground that before the enactment of section 2(b)\* of the  
National Guard (Amendment) Law, 1978 (Law 22 of 1978) he  
could not be considered as a citizen of the Republic and he was,  
15 therefore, not liable for service in the National Guard as under  
section 4 of the National Guard Laws 1964 to 1967 only citizens  
of the Republic were liable for such service. Following the  
enactment of the said section 2(b) he was considered as a con-  
script and when the respondent decided to call up his class for

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\* Quoted at pp. 95-96 *post*.

service in the National Guard he sought annulment of the relevant decision by means of this recourse.

Counsel for the applicant contended that the Treaty of Establishment of the Republic of Cyprus should be considered as part and parcel of the Constitution. So, section 2(b) of Law 22/78, as far as the term "citizen of the Republic" is concerned, is unconstitutional as it conflicts with Annex D of the said Treaty and according to Article 179.2 of the Constitution no law or decision of the House of Representatives shall in any way be repugnant to, or inconsistent with, any of the provisions of the Constitution.

Counsel for the respondent, on the other hand, submitted that the Treaty of Establishment is not part of our Constitution because Article 179 of the Constitution refers only to laws or decision which are repugnant or inconsistent with the provisions of the Constitution which consist of 199 Articles; and that whenever the Constitutional legislator expressed the will to give constitutional force to any treaty which was signed before the Constitution he did so by means of Article 181\*.

Article 198 of the Constitution, as a result of which Law 43/67 (*supra*), incorporating the provisions of Annex D to the Treaty of Establishment was enacted, provides as follows:

"1. The following provisions shall have effect until a law of citizenship is made incorporating such provisions -

(a) any matter relating to citizenship shall be governed by the provisions of Annex D to the Treaty of Establishment;

(b) any person born in Cyprus, on or after the date of the coming into operation of this Constitution, shall become on the date of his birth a citizen of the Republic if on that date his father has become a citizen of the Republic or would but for his death have become such a citizen under the provisions of Annex D to the Treaty of Establishment.

2. For the purposes of this Article 'Treaty of Establishment' means the Treaty concerning the Establishment

\* Quoted at p. 97 *post*.



were permanently residing. In 1949 he emigrated to East Pakistan.

The mother of the applicant also a Greek Cypriot was born in Limassol on 4th April, 1932.

The applicant was born on 3rd January, 1961 in East Pakistan where his parents were residing and he is the holder of a British passport. 5

The family returned to Cyprus in 1971 and they are residing in Limassol ever since. They have retained their British Nationality as they neither applied to obtain the Cypriot Nationality either by virtue of the Cyprus legislation or by virtue of Annex D of the Treaty of Establishment. 10

On 24/6/77, the Migration Department of the Ministry of Interior issued a Certificate to the applicant, *exhibit 1*, which reads as follows: 15

“ It is hereby certified that Mr. Marinos Pieri, born in East Pakistan on 3/1/61, and holder of British Passport No. D898599 is not a citizen of the Republic of Cyprus.

This certificate is issued for the purpose of exit from Cyprus only and is valid for many trips for the period of one year only.” 20

By letter dated 10/7/78, the applicant, through his advocate, applied to the Migration Officer for the issue of a similar certificate certifying that the applicant is not a citizen of the Republic of Cyprus and the following certificate dated 11/7/78, *exhibit 3*, was issued to him: 25

“ It is hereby certified that Mr. Marinos Pieri, born in East Pakistan on the 3rd January, 1961, holder of a British Passport No. D898599, is not a citizen of the Republic of Cyprus according to Law No. 43/67 and Annex D of the Treaty of Establishment. 30

2. For the purposes of the National Guard Laws 1964 to 1978, where the term ‘citizen of the Republic’ has the meaning which is attributed to it by virtue of section 2 of the National Guard (Amendment) Law No. 22/78, Mr. Marinos Pieri, according to our records, is, nevertheless, a conscript. 35

3. The above are issued for the exclusive use of the Ministry of Interior and Defence of the Republic of Cyprus."

5 On the 17th November, 1978, the Decision of the Council of Ministers under No. 17378 dated 2/11/78, by which the class of the applicant was called up for service in the National Guard was published in the Official Gazette of the Republic.

10 It is common ground that before the enactment of section 2 of the National Guard (Amendment) Law of 1978 (Law 22/78), the applicant could not be considered as a citizen of the Republic and, therefore, he was not liable for service in the National Guard as under section 4 of the National Guard Laws 1964 to 1977 it is a prerequisite that only citizens of the Republic are liable for such service. Section 2 of Law 22/78, 15 which amended section 2 of the National Guard Laws 1964 to 1977, reads as follows:

"Τὸ ἄρθρον 2 τοῦ βασικοῦ νόμου τροποποιεῖται ὡς ἀκολουθῶς:—

- 20 (α) Διὰ τῆς ἐξ αὐτοῦ διαγραφῆς τοῦ ὀρισμοῦ τῆς λέξεως 'Υπουργός' καὶ τῆς ἀντικαταστάσεώς του διὰ τοῦ ἀκολουθοῦ ὀρισμοῦ:—
- 'Υπουργός' σημαίνει τὸν Ὑπουργὸν Ἀμύνης καὶ
- 25 (β) διὰ τῆς ἐν αὐτῷ ἐνθέσεως, εἰς τὴν δέουσαν ἀλφαβητικὴν αὐτοῦ σειρὰν, τοῦ ἀκολουθοῦ νέου ὀρισμοῦ:— 'πολίτης τῆς Δημοκρατίας' σημαίνει πολίτην τῆς Δημοκρατίας καὶ περιλαμβάνει πρόσωπον Κυπριακῆς καταγωγῆς ἐξ ἀρρενογονίας, ἥτοι—
- 30 (α) πρόσωπον, τὸ ὁποῖον κατέστη Βρετανὸς ὑπῆκοος δυνάμει τῶν περὶ Προσαρτήσεως τῆς Κύπρου Διαταγμάτων ἐν Συμβουλίῳ τοῦ 1914 ἕως 1943· ἢ
- (β) πρόσωπον, τὸ ὁποῖον ἐγεννήθη ἐν Κύπρῳ κατὰ ἢ μετὰ τὴν 5ην Νοεμβρίου, 1914, καθ' ὃν χρόνον οἱ γονεῖς αὐτοῦ διέμενον συνήθως ἐν Κύπρῳ· ἢ
- 35 (γ) ἐξώγαμον ἢ νόθον τέκνον τοῦ ὁποῖου ἢ μήτηρ κατεῖχε κατὰ τὸν χρόνον τῆς γεννήσεως αὐτοῦ

τὰ προσόντα τὰ ἀναφερόμενα ἐν τῇ ἄνω παραγράφῳ (α) ἢ (β) τοῦ παρόντος ὁρισμοῦ· ἢ

- (δ) πρόσωπον καταγόμενον ἐξ ἀρρενογονίας ἐκ προσώπου οἷον ἀναφέρεται ἐν τῇ ἄνω παραγράφῳ (α) ἢ (β) ἢ (γ) τοῦ παρόντος ὁρισμοῦ.” 5

(“ Section 2 of the principal law is hereby amended as follows:—

- (a) By the deletion therefrom of the definition of the word ‘Minister’ and its substitution by the following definition 10

‘Minister’ means the Minister of Defence.

- (b) By the insertion therein, in its proper alphabetical order, of the following new definition:—

‘Citizen of the Republic’ means citizen of the Republic and includes a person of Cypriot origin descended in the male line, that is— 15

- (a) a person who has become a British subject under the provisions of the Cyprus (Annexation) Orders in Council 1914–1943; or
- (b) a person born in Cyprus on or after the 5th November, 1914 at a time when his parents were ordinarily residing in Cyprus; or 20
- (c) an illegitimate child whose mother, at the time of his birth, possessed the qualifications referred to in paragraphs (a) or (b) of this definition; or 25
- (d) a person descended in the male line from a person referred to in paragraphs (a) or (b) or (c) of this definition”.)

It is clear that by virtue of Law 22/78 the applicant, who is a British subject, and who is not considered as a citizen of the Republic either under Annex D of the Treaty of Establishment or the Republic of Cyprus Citizenship Law of 1967 (Law 43/67), is for the purposes of the National Guard Laws a citizen of the Republic and so he is liable to conscription. 30 35

Counsel for applicant submitted that the Treaty of Establish-

ment by virtue of which the Republic of Cyprus was created, should be considered as part and parcel of our Constitution. So, section 2(b) of the National Guard (Amendment) Law, of 1978 (Law 22/78), as far as the term "citizen of the Republic" is concerned, is unconstitutional as it conflicts with Annex D of the said Treaty and according to Article 179.2 of the Constitution no law or decision of the House of Representatives shall in any way be repugnant to, or inconsistent with, any of the provisions of the Constitution.

Counsel for the respondent, on the other hand, submitted that the Treaty of Establishment is not part of our Constitution. Article 179 refers only to laws or decision which are repugnant or inconsistent with the provisions of the Constitution which consist of 199 Articles. Whenever the constitutional legislator expressed the will to give constitutional force to any treaty which was signed before the Constitution reference is made in Article 181 of the Constitution where it is provided that "the treaty guaranteeing the independence, territorial integrity and Constitution of the Republic concluded between the Republic, the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland, and the Treaty of Military Alliance concluded between the Republic, the Kingdom of Greece and the Republic of Turkey, copies of which are annexed to this Constitution as Annexes I and II, shall have constitutional force." Also, the treaties with superior force are provided in Article 169 of the Constitution.

Due to the fact that this case is a peculiar one and unique in its kind no reference was made by counsel to any Judicial precedent as there is not any.

It is true that no reference is made to the Treaty of Establishment in Article 181 of our Constitution but, in my view, the problem is solved by the provisions of Article 198 of our Constitution which reads as follows:

"198.1 The following provisions shall have effect until a law of citizenship is made incorporating such provisions –

(a) any matter relating to citizenship shall be governed by the provisions of Annex D to the Treaty of Establishment;

(b) any person born in Cyprus, or on after the date

of the coming into operation of this Constitution, shall become on the date of his birth a citizen of the Republic if on that date his father has become a citizen of the Republic or would but for his death have become such a citizen under the provisions of Annex D to the Treaty of Establishment. 5

2. For the purposes of this Article 'Treaty of Establishment' means a Treaty concerning the Establishment of the Republic of Cyprus between the Republic, the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland." 10

As a result of this Article, the Republic of Cyprus Citizenship Law of 1967, Law 43/67, incorporating the provisions of Annex D to the Treaty of Establishment was enacted and came into force on 1/12/68 by Notification of the Council of Ministers published in Supplement No. 3 to the Cyprus Gazette Not. 832 at page 897. 15

It is clear from the provisions of Article 198 that any law of citizenship made which does not incorporate the provisions of Annex D to the Treaty of Establishment or incorporates provisions which are contrary to the provisions of Annex D, is unconstitutional, as offending the said article. Therefore, section 2(b) of the National Guard (Amendment) Law, 1978 is unconstitutional. Consequently, the decision of the Council of Ministers under No. 17378 dated 2/11/78, which was published in the Official Gazette of the Republic of the 17th November, 1978, by which the class of the applicant was called up for conscription, in so far as the applicant is concerned, is declared null and void and of no legal effect whatsoever. 20 25

On the question of costs the respondents are adjudged to pay to the applicant £25 against his costs. 30

*Sub judice decision annulled.  
Order for costs as above.*