

1980 June 7

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEOCHARIS IOANNIDES,

Applicant,

v.

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

Respondents.

(Case No. 191/79).

National Guard—Military service—Exemption from—On ground of permanent residence abroad—Section 4(3)(c) of the National Guard Laws—Clear and unambiguous—Once established that applicant permanently residing abroad, he is entitled to exemption.

5 The applicant, who was born at Morphou, went to Athens on
20.8.1964 for the purpose of studies after been granted exit
permit and postponement of his enlistment in the National
Guard up to 31st December, 1970. This permit was renewed
10 as a matter of course from year to year up to the 15th July,
1972 for the purpose of enabling him to complete his studies.
He visited Cyprus for the last time in the beginning of 1973
and left on 28.2.1973. He obtained his diploma on 28.1.1974
and by the end of June, 1974 he started making preparations
15 for his return to Cyprus where he intended to practise as an
advocate. Due to the tragic events of July, 1974 and the occupa-
tion of Morphou, by the Turkish invading forces, his family,
consisting of his parents, his two minor sisters and his grand-
father, fled to Greece as refugees where they live ever since under
the same roof with him. As a result of the new situation that
20 was created he changed his plans and obtained employment in
Athens in order to support himself and his family. On 1.12.1978
applicant applied to the respondents for exemption from his
obligation to serve in the National Guard due to his residing

permanently abroad but his application was rejected. Hence this recourse.

Counsel for the applicant contended that the respondents acted contrary to section 4(3)(c) of the National Guard Law, which provides that citizens of the Republic permanently residing abroad are exempted from service in the National Guard. 5

Counsel for the respondents has not disputed that applicant was permanently residing abroad; but claimed that his application for exemption was rejected because he failed to present himself for enlistment after the 15th July, 1972 when his exit permit and postponement of enlistment expired. 10

Held, that in the particular circumstances of this case and in view of the fact that in 1973 the applicant was allowed to leave Cyprus in order to complete his studies, he cannot be considered that he failed to enlist in the National Guard after the 15th July, 1972; that, irrespective of this view, the wording of section 4(3)(c) of the National Guard Law is clear and unambiguous; that once it has been established that the applicant is permanently residing abroad, he is entitled to exemption from the obligation to serve in the National Guard; and that, therefore, the decision not to exempt him must be declared null and void and of no legal effect whatsoever. 15 20

Sub judice decision annulled.

Recourse.

Recourse against the decision of the respondents not to exempt the applicant from the obligation to serve in the National Guard. 25

L. Papaphilippou, for the applicant.

G. Constantinou (Miss), for the respondents.

Cur adv. vult. 30

MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act or decision of the respondents dated 3/5/79, not to exempt the applicant from the obligation to serve in the National Guard is null and void and of no legal effect whatsoever. 35

The relevant facts of this recourse, shortly put, are the following:

The applicant was born at Morphou on 20/6/1946 and on

20/8/64 went to Greece for studies at the Law School of the Athens University.

As it appears from the file of the case, *exhibit 1*, the applicant was granted exit permit and postponement of his enlistment in the National Guard (adhian exodhou ke anastolin katataxeos) up to 31st December, 1970. This permit was renewed as a matter of course from year to year up to the 15th July, 1972, for the purpose of his completing his studies. As it appears from his passport, *exhibit 2*, the last time he visited Cyprus was in the beginning of 1973 and left on 28/2/1973.

On 28/1/74 he obtained the relevant diploma and by the end of June, 1974 he started making preparations for his return to Cyprus where he intended to practise as an advocate. Due to the tragic events of July, 1974 and the occupation of Morphou by the Turkish invading forces, his family, consisting of his parents, his two minor sisters and his grandfather, fled to Greece as refugees where they live ever since under the same roof with him. All their property, movable and immovable was left behind at Morphou. Due to the new situation that was created the applicant changed his plans and obtained employment in Athens in order to support himself and his family. He is since 1977 the Editor in Chief and Managing Editor of the magazine "Hellenic Investments".

By letter dated 1/12/78 the applicant applied to the respondents for exemption from his obligation to serve in the National Guard due to his residing permanently abroad.

By letter dated 15/12/78 the respondents informed the applicant that his application was rejected.

On 26/1/79 the applicant filed Recourse No. 50/79 as against the above decision of the respondents. This recourse was withdrawn on 16/3/79 on the undertaking by the respondents to re-examine his case. On 19/3/79 his advocates submitted to the respondents new facts in support of his application for exemption from service in the National Guard, and in reply they received a letter dated 3/5/79 which reads as follows:

"I have been instructed to refer to your letter dated 19/3/79 in connection with the subject of the re-examination of the application of the conscript client of yours Theocharis

Ioannides for exemption from the obligation of service in the National Guard due to his permanently residing abroad and to inform you that the application of your client has been re-examined with due care but it has not been possible to be accepted".

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As a result, the applicant filed the present recourse.

Counsel for applicant submitted that the respondents in rejecting his application for exemption from service in the National Guard acted contrary to section 4(3)(c) of the National Guard Law, which provides that citizens of the Republic who are permanently residing abroad are exempted from such service.

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It is clear from the file of the case, *exhibit 1*, that the applicant is permanently residing in Athens. This fact has not been disputed by counsel for the respondents. It is also clear from the said file that the Minister of the Interior, to whom the case of the applicant was referred by the Advisory Committee recommending the exemption, rejected his application for the reason that the applicant failed to present himself for enlistment after the 15th of July, 1972, when his exit permit and postponement of enlistment expired and so rendered himself "any-potaktos".

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I must say that in the particular circumstances of this case and in view of the fact that in 1973 the applicant was allowed to leave Cyprus in order to complete his studies, he cannot be considered that he failed to enlist in the National Guard after the 15th July, 1972. But irrespective of my above view, the wording of section 4(3)(c) of the National Guard Law is clear and unambiguous. Once it has been established that the applicant is permanently residing abroad, he is entitled to exemption from the obligation to serve in the National Guard.

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Therefore, the decision of the respondents not to exempt the applicant from the obligation to serve in the National Guard contained in their letter of 3/5/79, is declared null and void and of no legal effect whatsoever.

On the question of costs, I award £15.- against the costs of the applicant.

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Sub judice decision annulled. Order for costs as above.