

1980 November 7

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS GEORGHIOU AND OTHERS,

Applicants,

v.

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

Respondent.

(Cases Nos. 223, 224 and 225/80).

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 and Annex “D” to the Treaty of Establishment.

- 5 *National Guard—Military Service—Citizen of the Republic—Alien—Liability to serve in the National Guard—Section 2(b) of the National Guard (Amendment) Law, 1978 (Law 22/78) imposing such liability on persons who are not citizens of the Republic, but have descended in the male line from persons of Cyprus origin,*
10 *unconstitutional as offending Article 198 of the Constitution and Annex “D” to the Treaty of Establishment.*

15 The applicants, who were not citizens of the Republic but persons who have descended in the male line from persons of Cyprus origin, by means of these recourses challenged the decision of the respondents to call them up for service in the National Guard. Their recourses presented the same legal points which were in issue and have been dealt with in the case of *Drousiotis v. The Republic* (reported in this Part at p. 563 *ante*)
20 namely the constitutionality of section 2(b) of the National Guard (Amendment) Law, 1978 (Law 22/78).

The Court adopting, *mutatis mutandis*, for the purposes of these cases the reasons set out in the above case, which are deemed to form part of this judgment:

Held, that section 2(b) of the National Guard (Amendment) Law, 1978 (Law 22/78) is contrary to the provisions of Article 198 of the Constitution and Annex "D" to the Treaty of Establishment, which has been incorporated in Article 198 and the Republic of Cyprus Citizenship Law, 1967 (Law 43/67); and that, consequently, applicants are entitled to the declarations prayed for in the recourses which are made accordingly. 5

Sub judice decisions annulled.

Cases referred to:

Drousiotis v. Republic (reported in the Part at p. 563 *ante*; 10
Pieris v. Republic (1979) 3 C.L.R. 91.

Recourses.

Recourses against the decision of the respondent whereby the applicants were asked to enlist and serve in the National Guard. 15

A. Poetis, for the applicants.

K. Michaelides, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. By these three recourses which were heard together as presenting common questions of law and fact, the applicants pray for— 20

(1) a declaration that the decision of the Council of Ministers or the Minister of Interior and Defence which was published in the Cyprus Gazette No. 519 of the 30th May, 1980, Supplement No. 3 whereby the class of the applicant was called for service in the national guard and/or the part of such decision whereby persons descended in the male line from persons of Cyprus origin, is null and void and of no legal effect. 25

(2) A declaration that the notice which was served on each of the applicants on 9.7.1980 for enlistment in the National Guard is void and of no legal effect. 30

The facts of each particular case are as follows:

Applicant in Recourse No. 223/80 was born on 20.6.1960 in Australia where his parents were residing. His parents had emigrated to Australia on or about 1958 and they are both holders of British passports. The father was born in Larnaca on the 12th June, 1933 and the mother in Rizokarpaso on the 35

4th December, 1933. The applicant returned to Cyprus in 1967 together with his parents. On the 17th November, 1979 the Emigration Department of the Ministry of Interior, issued a certificate to the effect that the applicant was not a citizen of the Republic under the provisions of Annex "D" of the Treaty of Establishment of the Republic and/or Law 43/67. Such certificate is *exhibit 1* in the case.

Applicant in Recourse No. 224/80 who is the holder of a British passport was born in London on 14.5.1962 where his parents were permanently residing since 1959. Both his parents are holders of British passports. The father was born in Livadhia, Cyprus on the 27th November, 1939 and the mother in Avlona, Cyprus, on the 31d of October, 1938. The applicant and his parents returned to Cyprus in 1977 and ever since they have been residing in Cyprus. Applicant on 19.12.1979 was issued with a certificate by the Emigration Department of the Ministry of Interior (*exhibit 1*) to the effect that he was the holder of a British passport and that he was not a citizen of the Republic under the provisions of Annex "D" of the Treaty of Establishment or the Citizenship Law 43/67. By a separate paragraph, however, it was mentioned that the applicant being a person descended in the male line from a person of Cyprus origin, could acquire, the Cyprus citizenship after an application to that effect. Applicant since the 20th March, 1980, was offered a vacancy for studies in the Edmonton College of Further Education with effect as from June, 1980.

Applicant in Case No. 225/80 is the holder of a British passport and was born in London on 16.1.1962 where his parents were permanently residing. Both his parents are the holders of British passports. Both his parents were born in Cyprus but they had been residing permanently in England since 1947 till 1973 when they came to Cyprus. Applicant came to Cyprus on 22.7.1977. On 11.4.1980 applicant was issued with a similar certificate as in the other two cases that he was the holder of British passport and that he was not a citizen of the Republic. Furthermore, that he could acquire the Cyprus citizenship after an application to that effect. By letter dated 4th January, 1980 from the Chelsy College of Aeronautical and Automobile Engineering he was offered a vacancy for a course which commences on the 12th November, 1980.

The applicants relying on the said certificates issued by the Emigration Department, continued residing in Cyprus, waiting for the time of their departure for England, for the purpose of their studies.

On the 30th May, 1980 an order of the Minister of Interior and Defence in the exercise of his powers under the National Guard Laws was published in the official Gazette of the Republic, under Notification No. 519 whereby all male persons born in Cyprus between 1.1.1962—31.12.1962 including persons descended in the male line from persons of Cyprus origin, were called to enlist in the National Guard. Applicants in Cases Nos. 223 and 224/80 were also served with notices to enlist in the National Guard on 9.7.1980. Applicant in Case No. 225/80, after the notification of the order, addressed a letter to the Minister of Interior and Defence, dated 9.6.1980 applying for exemption but in reply he was informed by letter dated 11.6.1980 that he had to enlist in the National Guard.

It is the allegation of the applicants in all cases that the said order and/or the provision of section 2 of Law 22/78 are null and void as contravening Annex "D" of the Treaty of Establishment and the provisions of the Constitution. Counsel for the respondent by his opposition alleges that the acts complained of are lawful and taken in conformity with section 2 of the National Guard Laws, as amended by section 2(b) of the National Guard (Amendment) Law, 1978 (Law No. 22/78) and that the said Law does not in any way contravene the provisions of the Constitution. It is further alleged that the definition of "citizen of the Republic" set out in section 2(b) of Law 22/78 is solely for the purpose of the National Guard Laws and, therefore, it does not offend the Constitution, as it was not intended to bestow upon the applicants the Cyprus citizenship. According to the allegations of counsel for the respondent, the Treaty of Establishment and Annex "D" thereto are irrelevant for the purposes of the present proceedings. Furthermore, the object of the Treaty of Establishment was to safeguard the right of the citizenship of Cyprus to certain categories of persons who satisfy certain requirements enumerated therein, but a new law might enlarge the categories of persons who could acquire the citizenship of Cyprus even though same was not provided in the Treaty of Establishment. Also, that the applicant though technically an alien, is in a

privileged position vis-a-vis other aliens and is entitled to obtain the Cyprus citizenship upon application and he cannot, on the one hand enjoy all rights and privileges of a Cyprus national and on the other hand avoid the obligation to serve
 5 in the National Guard imposed on all Cypriots which, obligation, is the necessary consequence of the equality enjoyed by applicant before the law and administration.

It is an undisputed fact that all applicants in the present cases are aliens and according to the certificates issued by the
 10 Emigration Department, could not be considered as citizens of the Republic under the provisions of the Constitution and of Annex "D" thereto or the Cyprus Citizenship Law. They could acquire the Cyprus citizenship only after an application.

It is also common ground that before the enactment of section
 15 2 of the National Guard (Amendment) Law, 1978, (Law No. 22/78) the applicants could not be considered as citizens of the Republic and, therefore, they were not liable for service in the National Guard under the provisions of section 4 of the National Guard Laws 1967-1977 which impose such a duty on
 20 citizens of the Republic only.

As there was no material dispute about the facts of the cases, counsel restricted themselves in arguing the legal aspect of the cases and the points of law raised in the applications and the
 25 oppositions which turn round the question of the constitutionality of section 2(b) of the National Guard (Amendment) Law, 1978 (Law No. 22/78) whereby the previous section 2 of the National Guard Laws 1967-1977 is amended. The respective section reads as follows:-

30 "2. Το άρθρον 2 του βασικοῦ νόμου τροποποιεῖται ὡς ἀκολουθῶς:

(α) _____

(β) διὰ τῆς αὐτῶ 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-

35

(α) πρόσωπον, τὸ ὁποῖον κατέστη Βρεττανὸς ὑπήκοος

δυνάμει τῶν περὶ Προσαρτήσεως τῆς Κύπρου Διαταγμάτων ἐν Συμβουλίῳ τοῦ 1914 ἕως 1943·

- (β) πρόσωπον, τὸ ὁποῖον ἐγενήθη ἐν Κύπρῳ κατὰ ἢ μετὰ τὴν 5ην Νοεμβρίου, 1914, καθ' ὃν χρόνον οἱ γονεῖς αὐτοῦ διέμενον συνήθως ἐν Κύπρῳ· ἢ 5
- (γ) ἐξώγαμον ἢ νόθον τέκνον τοῦ ὁποῖου ἡ 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.” 10

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

- (a) _____
- (b) By the insertion therein, in its proper alphabetical order, of the following new definition:- 15
 ‘Citizen of the Republic’ means citizen of the Republic and includes a person of Cypriot origin descended in the male line, that is-
- (a) a person who has become a British subject under the provisions of the Cyprus (Annexation) Orders in Council 1914-1943; or 20
- (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 25
- (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
- (d) a person descended in the male line from a person referred to in paragraphs (a) or (b) or (c) of this definition”). 30

Counsel for applicants adopted the address of counsel for applicant in Case No. 123/80 which was heard on the same day and counsel for the respondent also adopted his address in the same case. 35

The cases under consideration present the same legal points which were in issue and have already been dealt with in the case of *Simeon Drousiotis v. The Republic* (Case No. 123/80, as yet unreported*) in which judgment was delivered on the 14th
5 October, 1980. The reasons set out in the said judgment and which need not be repeated in this judgment but are adopted *mutatis mutandis* for the purposes of the present cases, should be deemed to form part of this judgment.

I find myself unable to agree with the grounds of law advanced
10 by counsel for the respondent for the reasons already mentioned in the above case. As I have said in the said judgment, citizenship is not a status which can be imposed on a person without his consent, as very rightly the Emigration Officer mentioned in the certificates issued by him. (Vide, in this respect, Mari-
15 thakis, *Private International Law*, 2nd Ed. Vol. A, p. 253). Malachos, J. in *Pieri v. The Republic* (1979) 3 C.L.R. 91, which was a similar case, has expressed also the opinion that the provisions of section 2(b) of Law 22/78 were contrary to the provisions of the Constitution and Annex "D" concerning citizenship,
20 which, I fully endorse.

In the result, I find that section 2(b) of the National Guard (Amendment) Law, 1978 (Law No. 22/78), is contrary to the provisions of Article 198 of the Constitution and Annex "D" thereto which has been incorporated in Article 198 and the
25 Citizenship Law, 1967 (Law No. 43/67). Consequently, I find that applicants are entitled to the declarations prayed for in the recourses and I make such declarations accordingly. In the special circumstances of these cases, I make no order for costs.

30 *Sub judice decisions annulled. No order as to costs.*

* Reported in this Part at p. 563 *ante*.