1982 July 15

[TRIANTAFYLLIDES, P.]

DAVID CHRISTOU AND OTHERS,

Appellants-Applicants,

v.

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

Respondent.

(*Application in Revisional Jurisdiction Appeal No.* 283).

Provisional Order—Jurisdiction—Revisional Jurisdiction Appeal—Whether the Court has jurisdiction to grant provisional order staying effect of sub judice act pending determination of an appeal against dismissal of a recourse challenging the act—Rule 13 *of the Supreme Constitutional Court Rules of Court and section* 11 *of the Administration of Justice* (*Miscellaneous Provisions*) *Law,* 1964 (*Law* 33/64). 5

Provisional Order—Dismissal of recourse against rejection of application for exemption from military service—Appeal against dismissal of recourse—Application for provisional order postponing the military service until determination of the appeal—No pressing need to secure appellants' service in the National Guard in view of a statement by the respondent, when same provisional orders were sought before the trial Judge, that no action will be taken against them for a period of six months—Consequently no real harm to the public interest will be caused if appellants were allowed not to enlist for military service for a further period of few months—Important constitutional issues arise in the appeal—Appellants Jehova's Witnesses and objecting to military service on religious grounds—And if made to do military service, contrary to their religious beliefs, they will suffer harm which cannot be adequately estimated or compensated afterwards in terms of damages, if successful in their appeal—Provisional order granted pending the determination of the appeal. 10 15 20

The appellants, who professed to be Jehova's Witnesses and 25

objected, mainly on religious grounds, to military service in the National Guard challenged, by means of recourses, the decisions of the respondent Minister to reject their applications for exemption from military service, as conscripts or reservists. The trial Judge dismissed their recourses on June 3, 1982 and after appealing against such dismissal on July 6, 1982 they applied for provisional orders postponing, until the determination of the appeals, their military service as conscripts or reservists. The applications were based on rule 13 of the Supreme Constitutional Court Rules of Court and on rules 18 and 19 of Order 35 of the Civil Procedure Rules. Provisional orders, which were more or less the same as those applied for on this occasion, were sought before the commencement of the hearing of the recourses but they were not proceeded with and they were withdrawn because counsel appearing for the respondent, on January 9, 1982, informed the trial Judge, that "she had instructions to state that no action will be taken against the appellants for a period of six months."

Held, (I) *on the question of jurisdiction to entertain the applications:*

That this Court possesses jurisdiction to deal with both these two applications because any Judge of the Supreme Court may make a provisional order under rule 13, of the Supreme Constitutional Rules of Court when such rule is applied in conjunction with section 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64) (see, inter alia, *Georghiades (No. 1) v. The Republic* (1965) 3 C.L.R. 392, 394);- that this Court is not called upon to decide, on this occasion, whether an application for a provisional order can be entertained even after judgment has been given in the relevant proceedings under Article 146 of the Constitution and an appeal has been filed against such judgment, because counsel appearing for the respondent has not advanced any arguments to the contrary; that this Court would be inclined to the view that there is nothing to prevent the filing of applications such as those now before it because, in the light of the relevant provisions of section 11 of Law 33/64, a revisional jurisdiction appeal is to be regarded as a continuation before the Full Bench of the Supreme Court of the proceedings in the recourse concerned which took place, in the first instance, before a Judge of the

Court; that what, in essence, continues to be in issue at the stage of the revisional jurisdiction appeal is still the validity of the subject matter of the particular recourse in which the appealed from judgment has been given (see, inter alia, *The Republic* v. *Vassiliades* (1967) 3 C.L.R. 82, 88, 101). 5

(II) *On the merits of the application:*

That by the statement of Counsel of the Republic, on January 9, 1982, that no action would be taken against the appellants for a period of six months there was, in effect, suspended for six months the obligation of the appellants to do military service 10 and this is a very strong indication that there exists no pressing need to secure their services in the National Guard with the consequence that no real harm, to the public interest will be caused if, for a further period of few months the appellants were allowed not to enlist for military service pending the deter- 15 mination of their appeal; that it is obvious that quite important constitutional issues arise for determination in the appeal; that it is abundantly clear that the appellants are seeking, at this stage, provisional orders for mainly the same reason for which they filed their recourses and sought then, too, provisional 20 orders, namely because, being Jehova's witnesses, they consider military service to be incompatible with their religious beliefs; that if the appellants are made now to do military service contrary to their religious beliefs, and if, later on, they are successful in their appeal, they will have suffered harm which 25 cannot be adequately estimated or compensated afterwards in terms of damages; that, therefore, there will be granted provisional orders suspending, pending the determination of the appeal or until further order of the Court, the effect of the decisions of the respondent which require the appellants to 30 serve as conscripts or reservists in the National Guard.

Application granted.

Cases referred to:

Georghiades (*No.* 1) v. *The Republic* (1965) 3 C.L.R. 392 at p. 394; 35

Katsiaouni v. *The Republic* (1982) 3 C.L.R. 68 at p. 72;

Republic v. *Vassiliades* (1967) 3 C.L.R. 82 at pp. 88, 101;

Pikis v. *The Republic* (1968) 3 C.L.R. 303 at p. 305;

Republic v. *Pericleous* (1972) 3 C.L.R. 63 at p. 68;

P.O.E.D. v. *Registrar of Trade Unions* (1982) 3 C.L.R. 177 at pp. 182, 183;

Aristides v. *The Republic* (1982) 3 C.L.R. 1 at p. 6;

Economides v. *The Republic* (1982) 3 C.L.R. 37 at p. 43

5 **Applications for provisional orders.**

Applications for provisional orders postponing the military service of the applicants, until the determination of their appeal against the judgment of a Judge of the Supreme Court of Cyprus (L. Loizou, J.) whereby their recourses against the decision of the 10 respondent rejecting their applications for exemption from military service were dismissed.

L. Papaphilippou with *E. Vrahimi* (*Mrs.*) for the applicants.

Gl. HadjiPetrou with *A. Vladimirou*, for the respondent.

Cur. adv. vult.

15 TRIANTAFYLLIDES P. read the following decision. By means of two applications, which have been filed on July 6 and July 12, 1982, respectively, the applicants—who are the appellants in Revisional Jurisdiction Appeal No. 283—seek, in effect, provisional orders postponing, until the determination of the 20 said appeal, the military service, as conscripts, of those of the appellants who were the applicants in recourses Nos. 414/81 and 468/81, and the military service, as reservists, of those of the appellants who were the applicants in recourse 459/81.

The judgment* dismissing the said recourses was delivered 25 by a Judge of this Court on June 3, 1982.

The sixty-three applicants in case 414/81, the forty-five applicants in case 459/81 and the thirty applicants in case 468/81 challenged the decisions of the respondent Minister of Interior and Defence to reject their applications for exemption 30 from military service.

All the appellants, who profess to be Jehova's Witnesses, object, mainly on religious grounds, to military service in the National Guard.

R.A. 283 was filed, by the appellants, on July 6, 1982, and 35 together with it there was filed the first of the two applications which are now before this Court. It is stated in such application that it is based on rule 13 of the Supreme Constitutional Court

* Reported in (1982) 3 C.L.R. 365.

Rules of Court. This application came up for hearing on July 10, 1982, and it was then adjourned to July 13, 1982, to enable counsel for the appellants to consider the position further.

Then, on July 12, 1982, the second, out of the two applications now before this Court, was filed, seeking provisional orders which are the same as those sought by means of the application of July 6, 1982. On this occasion it was stated that the application was based not only on rule 13 of the Supreme Constitutional Court Rules of Court but, also, on rules 18 and 19 of Order 35 of the Civil Procedure Rules. The reference to the said rules 18 and 19 was, apparently, made because, by virtue of the Appeals (Revisional Jurisdiction) Rules of Court of the Supreme Court, 1964 (No. 2, Second Supplement to the Official Gazette of November 19, 1964), the provisions of Order 35 of the Civil Procedure Rules, in relation to appeals, became applicable, mutatis mutandis, to revisional jurisdiction appeals, such as R.A. 283.

It may be observed, at this stage, that the adoption and application of civil procedure provisions in relation to revisional jurisdiction appeals is in accord with the trend which has been manifested long ago in other countries, such as, for example, France (see, in this respect, Kambitsis on "Administrative Procedure Rules of Court taken from the Civil Procedure and other Procedural Enactments"—Καμπίτση "Κανόνες Διοικητικής Δικονομίας λαμβανόμενοι ἐκ τῆς Πολιτικῆς Δικονομίας καὶ ἄλλων Δικονομικῶν Νόμων"—1957, p. 28).

The second application which was filed, as aforesaid, on July 12, 1982, even though it appears to be based, also, on rules 18 and 19 of Order 35 of the Civil Procedure Rules, is not, in effect, an application for stay of execution of the judgment which is appealed from by means of R.A. 283. Had it been, actually, an application for stay of execution it ought to have been placed, first, before the Judge of this Court, who delivered that judgment. As it is not, however, an application for stay of execution, but, in reality, only an application for provisional orders under rule 13 of the Supreme Constitutional Court Rules of Court, just the same as the earlier application which was filed on July 6, 1982, I am of the opinion that I possess jurisdiction to deal with both these two applications because any

Judge of the Supreme Court may make a provisional order under the said rule 13, when such rule is applied in conjunction with section 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64) (see *Georghiades* (*No.* 1)
5 v. *The Republic*, (1965) 3 C.L.R. 392, 394 and *Katsiaouni* v. *The Republic*, (1982) 3 C.L.R. 68, 72).

I am not called upon to decide, on this occasion, whether an application for a provisional order, such as those now before me, can be entertained even after judgment has been given in
10 the relevant proceedings under Article 146 of the Constitution and an appeal has been filed against such judgment, because counsel appearing for the respondent has not advanced any arguments to the contrary. I would, indeed, be inclined to the view that there is nothing to prevent the filing of applications
15 such as those now before me because, in the light of the relevant provisions of section 11 of Law 33/64, a revisional jurisdiction appeal is to be regarded as a continuation before the Full Bench of the Supreme Court of the proceedings in the recourse concerned which took place, in the first instance, before a
20 Judge of the Court; and what, in essence, continues to be in issue at the stage of the revisional jurisdiction appeal is still the validity of the subject matter of the particular recourse in which the appealed from judgment has been given (see, in this respect, inter alia, *The Republic* v. *Vassiliades*, (1967) 3 C.L.R.
25 82, 88, 101, *Pikis* v. *The Republic*, (1968) 3 C.L.R. 303, 305 and *The Republic* v. *Pericleous*, (1972) 3 C.L.R. 63, 68).

It is to be noted that provisional orders, which were more or less the same as those applied for now, were sought before the commencement of the hearing of cases 414/81, 459/81
30 and 468/81 but they were not proceeded with and they were withdrawn because counsel appearing then for the respondent, on January 9, 1982, informed the trial Judge and counsel for the applicants that she had "instructions to state that no action will be taken against the applicants for a period of six months".
35 There was thus brought about the situation which would have been created had the provisional orders applied for then by the applicants—now the appellants—had been granted, that is the suspension of their obligation to do military service, as conscripts or reservists, in the National Guard; and it is useful
40 to observe, while on this point, that the said applications for

provisional orders, which were made prior to the trial of the recourses of the appellants, were rightly withdrawn after the aforequoted statement of counsel for the respondent, because once such statement had been made those applications were deprived of their object (and see, in this respect, in Greece, "Review of Public Law and Administrative Law"—"'Επιθεώρησις Δημοσίου Δικαίου καὶ Διοικητικοῦ Δικαίου"—1971, vol. 15, p. 81, paragraph 31). 5

Cases 414/81, 459/81 and 468/81 were tried as expeditiously as possible and judgment was given on June 3, 1982. Then on July 6, 1982, before the expiration of the aforementioned period of six months, the appellants filed their present appeal, R.A. 283. 10

By the statement made, as aforesaid, on January 9, 1982, on behalf of the respondent Minister of Interior and Defence, that no action would be taken against the appellants for a period of six months there was, in effect, suspended for six months the obligation of the appellants to do military service; and this is a very strong indication that there exists no pressing need to secure their services, as conscripts or reservists, in the National Guard. Consequently, no real harm to the public interest will be caused if, for a further period which, normally, would not exceed a few months, the appellants were to be allowed not to enlist for military service pending the determination of their appeal, R.A. 283. 15 20 25

I have duly taken into account the above factor, together with all other relevant considerations, in deciding, in the light of the relevant principles of Administrative Law (see, in this respect, inter alia, *P.O.E.D.* v. *Registrar of Trade Unions*, (1982) 3 C.L.R. 177, 182, 183, *Aristides* v. *The Republic*, (1982) 3 C.L.R. 1, 6, *Economides* v. *The Republic* (1982) 3 C.L.R. 37, 43 and *Katsiaouni*, supra, 74) whether or not to grant the provisional orders applied for now by the appellants. 30

It is, indeed, obvious, from a perusal of the notice of appeal, that quite important constitutional issues arise for determination in R.A. 283. 35

Also, it is abundantly clear that the appellants are seeking, at this stage, provisional orders for mainly the same reason

for which they filed their recourses and sought then, too, provisional orders, namely because, being Jehova's Witnesses, they consider military service to be incompatible with their religious beliefs. In my view if the appellants are made now to do military service contrary to their religious beliefs, and if, later on, they are successful in their appeal, R.A. 283, they will have suffered harm which cannot be adequately estimated or compensated afterwards in terms of damages.

In the light of all the foregoing I have decided to grant provisional orders suspending, pending the determination of R.A. 283 or until further order of the Court, the effect of the decisions of the respondent which require the appellants to serve as conscripts or reservists in the National Guard.

Applications granted.