

1983 April 11

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS MESARITIS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR,

*Respondent.*

(Case No. 283/82).

*Administrative Law—Inquiry—Due inquiry—Administrative decision  
--Taken without due inquiry and not duly reasoned—Annulled.*

This was a recourse against the refusal of the respondent Minister to release applicant from the ranks of the National Guard. In taking the sub judice decision the respondent relied on the report of the Assistant District Inspector in which there was supplied information about the family and financial situation of the applicant; but no mention was made in such report to any of the grounds put forward by the applicant and his counsel nor did it appear that those grounds were examined or taken into consideration.

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*Held*, that it is a well settled principle of administrative law that administrative organs in reaching a decision should carry out a due inquiry and that their decision must be duly reasoned; that it does not appear that there was carried out a due inquiry into the application of the applicant and no reasons were given for reaching the sub judice decision and for this reason such decision should be annulled.

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*Sub judice decision annulled.*

Cases referred to:

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- Koudounas v. Republic* (1981) 3 C.L.R. 46 at p. 55;
- Mikellidou v. Republic* (1981) 3 C.L.R. 461 at pp. 470, 471;

*Agrotis v. Electricity Authority of Cyprus* (1981) 3 C.L.R. 503  
at p. 512;

*Karageorghis v. Republic* (1982) 3 C.L.R. 435 at pp. 460, 461.

### Recourse.

- 5 Recourse against the refusal of the respondent to release applicant from the ranks of the National Guard.

*N. Clerides*, for the applicant.

*M. Florentzos*, Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

- 10 DEMETRIADES J. read the following judgment. By means of the present recourse the applicant challenges the refusal of the respondent Minister of Interior to release him from the ranks of the National Guard.

- The applicant was born in Nicosia on the 9th February, 1951.  
15 He was called for service in the National Guard in January 1969, but as he was in Athens from 1968, where he had been enrolled at the Metsovion Polytechnic in order to study architecture, he did not enlist on such date.

- In 1973 the applicant, having completed his studies and after  
20 obtaining his degree, returned to Cyprus. In 1977 he set up his own architectural office in Nicosia. The same year he got married and a year later he had a child.

On the 1st June, 1981, the applicant after being called up joined the National Guard.

- 25 On the 5th April, 1982, his counsel addressed a letter to the Minister of Interior by which he applied for the applicant's release from the National Guard. As his application was turned down he now applies to the Court for a declaration that the decision of the respondent not to release him from the National  
30 Guard is null and void and of no legal effect whatsoever.

The applicant bases his application on the following grounds of law:-

- (a) The sub judice decision is contrary to Article 28 of the Constitution in that it is discriminatory.  
35 (b) The sub judice decision is contrary to Article 30 of the

Constitution in that it is not reasoned and/or duly reasoned.

- (c) The sub judge decision was taken under a misconception of the facts, without due inquiry into the special circumstances of the case, and the allegations of the applicant contained in his counsel's letter were never examined. 5

Counsel for the respondent denies that the sub judge decision is not duly reasoned and that it is discriminatory and alleges that it was taken rightly and legally in accordance with the provisions of the Constitution, the laws and the regulations and after all material facts and circumstances of the case were fully considered. The date of the birth of the applicant, the fact that in 1968 he went to Greece where he studied architecture and that he returned to Cyprus in 1973, after he had completed his studies, are admitted by the respondent's side. It is stated, however, in the opposition that for 8 years, that is from 1973 to 1981 the applicant, although liable to serve in the National Guard, did not join it and that instead in 1977 he established his own architectural office under the name "Nicos Mesaritis and Associates". The respondent, also, admits receipt of the letter of applicant's counsel, dated 5th April, 1982, but it appears that after this application was examined, it was placed before the Advisory Committee on matters dealing with the enlistment in the National Guard and that the said Committee suggested to the respondent that in view of the circumstances the application concerned should be turned down, as there were no special reasons for approving it. 10  
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By his aforementioned letter to the Minister, applicant's counsel put forward as grounds for the release of the applicant that he had, as from 1973, set up his own architectural office under the name "Nicos Mesaritis and Associates"; that he was employing four persons; that had the applicant been enlisted in the National Guard in 1968, when he was a University student, he would have served for only 12 months and that graduates of the Higher Technological Institute, who were born in 1950 and 1951, had to serve for only 12 months in the National Guard and that since the Higher Technological Institute was not a University, the service of graduates of that 30  
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Institute in the National Guard for only 12 months was discriminatory and offending Article 28 of the Constitution.

5 The applicant himself sent, also, a letter to the Minister in addition to that addressed to the Minister by his counsel, in which, amongst other grounds, he gives examples of class-mates of his graduates of Universities who were required to serve for a period of only 6 to 12 months.

10 As it appears from the file of the Ministry of Interior, which was produced, the application of the applicant was forwarded by and/or on behalf of the Director-General of the Ministry of Interior to the District Officer for a report.

15 On the 22nd April, 1982, an Assistant District Inspector submitted his report to the respondent supplying information about the family and financial situation of the applicant, which added nothing to that contained in the aforementioned letters of the applicant and his counsel.

20 On the 17th June, 1982, the Ministry of Defence informed applicant's counsel that his application should not be acceded to, because after an examination of the facts of the case, they had arrived at the conclusion that there were no special reasons for the release of the applicant. As it appears from the aforesaid file of the Ministry, the decision of the respondent was based on the report of the Assistant District Inspector. No mention is made to any of the other grounds put forward by the applicant and his counsel, nor does it appear that those  
25 grounds were examined or taken into consideration.

30 It is a well settled principle of administrative law that administrative organs in reaching a decision should carry out a due inquiry and that their decision must be duly reasoned (see *Koudounas v. The Republic*, (1981) 3 C.L.R. 46, 55, *Mikellidou v. The Republic*, (1981) 3 C.L.R. 461, 470, 471, *Agrotis v. The Electricity Authority of Cyprus*, (1981) 3 C.L.R. 503, 512 and *Karageorghis v. The Republic*, (1982) 3 C.L.R. 435, 460, 461).

35 Having considered the matter and having gone through the file of the Ministry of Interior, it does not appear that there

was carried out a due inquiry into the application of the applicant and no reasons were given for reaching the sub judice decision and for this reason such decision should be annulled.

The sub judice decision is, therefore, hereby annulled but, in the circumstances of the case, I make no order as to costs. 5

*Sub judice decision annulled with  
no order as to costs.*