

1979 June 4

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MARIOS EFSTATHIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR,

Respondent.

(Case No. 268/77).

Administrative Law—Administrative act or decision—Reasoning—Due reasoning—Previous formalities—Advice to the organ that will issue the decision—Such organ not bound to follow advice but in such a case bound to give cogent reasons for doing so—Respondent Minister not complying with advice of Advisory Committee, set up under section 4(4) of the National Guard Law, by writing word “No” thereon—His decision annulled for lack of due reasoning.

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The applicant in this recourse applied to the respondent to be exempted from the liability to serve in the National Guard, under section 4(3)(c) of the National Guard Law, on the ground that he was permanently residing abroad. His application was referred to the Advisory Committee, which is set up by virtue of section 4(4) of the Law, which decided that the application could be granted and advised the Minister accordingly. Upon receiving this advice the Minister inquired as to when the age of the applicant was called up for conscription and the answer was that it was called up in 1969. Under this information the Minister wrote the word “No” and the applicant was informed accordingly. Hence this recourse.

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Counsel for the applicant mainly contended that the decision complained of was not duly reasoned.

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Held, annulling the sub judice decision, (1) that the concept of obtaining advice has as its object the enlightenment of the organ

which is about to issue the administrative decision; that whenever the law requires the obtaining of such advice, as in the present case, the organ that issues the decision is bound to call for and hear such advice but it is not bound to comply with it and
 5 may reject it; that in such a case he is bound to give cogent reasons for doing so (see Conclusions from the Case-Law of the Greek Council of State 1929-1959 p. 193); and that it is quite a different case when the Minister decides to follow the advice of the Advisory Committee and issues a negative decision by just
 10 writing "No" on the relevant file because there the reasoning can be extracted from the elements of the file (*Economides v. Republic* (1978) 3 C.L.R. 157 distinguished).

(2) That though the Minister, after obtaining the advice of the Advisory Committee was not bound to follow it, he was bound
 15 to give reasons for that which he failed to do; that, therefore, the lack of due reasoning renders the decision complained of null and void and of no legal effect whatsoever; and that, accordingly, it must be annulled.

Sub judice decision annulled.

20 Cases referred to:

Economides v. Republic (1978) 3 C.L.R. 157.

Recourse.

Recourse against the refusal of the respondent to exempt applicant from the liability to serve in the National Guard.

25 *L. N. Clerides*, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse was born on 9/3/51 in Limassol town and on
 30 28th August, 1966, proceeded to the United Kingdom for employment and studies. The applicant as from 1966 to 1970 studied at Atholl Grammar School for the G.C.E. "O" Level, and from 1970 to 1972 at Uxbridge Technical College for the Ordinary National Diploma in Business Studies. As from 1973
 35 to 1975 he studied at Harrow College of Technology undertaking a course of part time study for the Higher National Diploma in Business Studies and for a Diploma of the Institute of Administrative Management Part I.

In the meantime, as from 1972 to 1974 he was working for E. Kyriakou London Ltd. and from 1974 to 1975 he was working for A.B.Dik London Ltd.

In 1975 he became a citizen of the United Kingdom and Colonies and obtained a British Passport No. 561714.

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In October 1975 the applicant left the United Kingdom for Greece where he is working as a Sales Manager of Tradex Machinery Supplies Ltd. On the 28th December, 1975, he got married to Cleopatra Eleftheriadou of Limassol and the couple is living in Athens ever since.

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On the 24th March, 1976, the applicant applied to the Ministry of Interior for exemption from his obligation to serve in the National Guard, as being permanently residing abroad, under the provisions of section 4(3)(c) of the National Guard Law. This section reads as follows:

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“ 4 (1) Subject to the provisions of subsection 3, all citizens of the Republic shall, from the 1st day of January of the year in which they complete the 18th year of their age and until 1st January of the year in which they complete the 50th year of their age, be subject to the provisions of this law and liable to serve in the Force.

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(2)

(3) There shall be exempted from the liability under subsection (1)

(a)

(b)

(c) citizens of the Republic who permanently reside outside Cyprus.”

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The case of the applicant was referred to the Advisory Committee, which is set up by virtue of section 4(4) of the Law, which in its turn asked for further particulars on the facts of the case and the applicant was notified accordingly.

The applicant forwarded the information required and the said Committee after examining his case, advised the Minister on the 16th July, 1976, that on the basis of the facts the application could be granted as the conscript was permanently residing ab-

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road but the Minister rejected the applicant's application. On the 27th June, 1977, the applicant, through his advocate, applied again to the Minister of Interior for exemption by virtue of section 4(3)(c) of the Law and his case was again referred to the
5 Advisory Committee who, on 22/7/77 advised the Minister as follows:

10 "The Committee considered today the present case and finds that the facts are as stated in the application of the applicant dated 27/6/77 and 14/7/77 and that on the basis of these facts the following are established:-

The decision of the Committee remains as it has been stated in its decision dated 16/7/76. The fact that since then the conscript is still residing in Greece strengthens furthermore his permanent residence abroad."

15 Upon receiving this advice of the Committee the Minister inquired as to when the age of the applicant was called up for conscription and the answer was that the age of the applicant was called up in 1969. Under this information the Minister wrote the word "No" in Greek. On the 28th July, 1977, the
20 Ministry of Interior addressed to the applicant, through his advocate, the following letter:

25 "I have been instructed to refer to your application by which you applied to be exempted from your obligation for service in the National Guard of the Republic due to your permanent residence abroad and to inform you that your application has been considered with the utmost attention but it has not been possible to be accepted."

30 The applicant as a result on the 8th October, 1977, filed the present recourse, claiming a declaration of the Court that the act and/or decision of the respondent not to grant to the applicant exemption from his obligation to serve in the National Guard, being a citizen of the Republic permanently residing abroad, is null and void and of no legal effect whatsoever.

35 The grounds of law on which the application is based, as argued by counsel for the applicant, may be summarised as follows:

1. The act and/or decision of the respondent is contrary to

section 4(3)(c) of the National Guard Laws 1964 to 1977;
and

2. The act and/or decision complained of is not duly reasoned.

Counsel for applicant submitted that the decision complained of should be annulled as there was ample material before the Minister that the applicant is permanently residing abroad and this, in fact, is the finding of the Advisory Committee. 5

He further argued that when the Minister refused the application he merely used the word "No" without giving any reasons as to why he disagreed with the recommendations of the Advisory Committee. 10

Counsel for the respondent very fairly and rightly conceded that the decision complained of should be annulled at least on the ground that it is not duly reasoned. 15

The concept of obtaining advice has as its object the enlightenment of the organ which is about to issue the administrative decision. Whenever the law requires the obtaining of such advice, as in the present case, the organ that issues the decision is bound to call for and hear such advice but it is not bound to comply with it and may reject it; but in such a case is bound to give cogent reasons for doing so. (See in this respect the Conclusions from Case Law of the Greek Council of State 1929 to 1959 page 193). It is quite a different case when the Minister decides to follow the advice of the Advisory Committee and issues a negative decision by just writing "No" on the relevant file. There, the reasoning can be extracted from the elements of the file. So, the present case is clearly distinguishable from the case of *Mikis L. Economides v. The Republic of Cyprus, through the Minister of Interior* (1978) 3 C.L.R. 157, where the Minister followed the advice of the Advisory Committee and issued a negative decision by just writing the word "No" under such advice. 20 25 30

Surely in the case in hand, the Minister, after obtaining the advice of the Advisory Committee, was not bound to follow it, but he was bound to give reasons for that. This he has failed to do. The lack of due reasoning, therefore, renders the decision complained of null and void and of no legal effect whatsoever. 35

In the result, the decision complained of is annulled.

5 In view of my above decision I am not going to pronounce on the point as to whether the applicant is a citizen of the Republic permanently residing abroad, and, therefore, is entitled to exemption from military service under section 4(3)(c) of the National Guard Laws, as this point may in the future be the subject matter of another recourse, after the Minister gives his reasons for refusing the application of the applicant.

10 On the question of costs, the respondent authority is ordered to pay £ 20.- towards the costs of the applicant.

Sub judice decision annulled. Order for costs as above.