

1981 March 7

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS L. LOIZIDES,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF INTERIOR,

*Respondent.*

(Case No. 170/80).

5 *National Guard—Military Service—Exemption from—More than three dependants—Section 4(3)(f) of the National Guard Laws—Wife, two minor children and mother—Whether partial maintenance of parents falling short of total maintenance would suffice in order to entitle conscript to exemption—Applicant sole supporter of his family—Partly maintaining his mother and providing for her residence—Finding of respondent that he had not more than three dependants due to a misconception of law—Refusal to exempt applicant from military service annulled.*

10 *Administrative Law—Misconception of Law—Application for exemption from military service on ground of having more than three dependants—Section 4(3)(f) of the National Guard Laws—Finding that applicant had not more than three dependants due to a misconception of law—Refusal to exempt him from military*  
15 *service annulled.*

20 The applicant applied to the respondent for exemption from service in the National Guard, by virtue of section 4(3)(f)\* of the National Guard Laws, on the ground that he had more than three dependants i.e. his wife, his two minor children and his mother. He was earning £150 per month which he was spending for the maintenance of his family. His mother aged 58, has been divorced since 1968 and was residing in his house.

\* Section 4(3)(f) is quoted at pp. 105–6 *post*.

According to a medical certificate from the District Medical Officer she was unable to work due to illness and she was receiving a monthly allowance of £15.600 mils from the Welfare Department.

The respondent Minister acting on the advice\* of the Advisory Committee, set up under section 4(4) of the above Laws, which relied on a report by the District Officer Limassol, rejected the application for exemption on the ground that applicant had not more than three dependants. Hence this recourse. 5

*Held*, that it is clear that the applicant is the only breadwinner of his wife and his two minor children; that as regards his mother, she could not possibly live on the monthly allowance of £15.600 mils and the applicant, besides providing for her residence, he was also partly maintaining her to a considerable extent; that partial maintenance of parents, brothers, or sisters, falling short of total maintenance, would possibly suffice in order to entitle the conscript to exemption from military service (see *Antoniou v. Republic* (1967) 3 C.L.R. 259); that, therefore, the Advisory Committee on the facts stated by the District Officer of Limassol in his report, found by it as true and correct, wrongly found that the applicant had not more than three dependants; that this finding was due to a misconception of the Law and, consequently, the advice given to the Minister on which he acted and issued the decision complained of was a wrong one; accordingly this recourse must succeed and the decision of the respondent Minister by which the applicant was not exempted from the obligation to serve in the National Guard must be declared null and void. 10 15 20 25

*Sub judice decision annulled.*

Cases referred to: 30

*Ioannou v. Republic* (1978) 3 C.L.R. 276 at p. 283;

*Antoniou v. Republic* (1967) 3 C.L.R. 259.

### Recourse.

Recourse against the refusal of the respondent to exempt applicant from his liability to serve in the National Guard. 35

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

*S. Georghiades*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

\* The advice is quoted at p. 106 *post*.

MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the decision of the respondent not to exempt him from service in the National Guard, communicated to the applicant's counsel by letter dated 24th April, 1980, should be declared null and void and of no legal effect whatsoever.

The following are the relevant facts of the case.

The applicant was born in London on 17.4.54 where his Greek Cypriot parents were residing at the time. They all returned to Cyprus in the year 1956 where they are living ever since. On 15.7.77 the applicant was enlisted in the National Guard where he is still serving as the prescribed period of 26 months service has not yet been completed due to his absence without leave on several occasions. On 14.3.80 applicant's counsel applied to the respondent Minister of Interior and Defence for exemption from service in the National Guard by virtue of section 4(3)(f) of the National Guard Laws on the ground that he had more than three dependants, i.e. his wife, his two minor children and his mother.

The said section is as follows:

"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.

(2) \_\_\_\_\_

(3) There shall be exempted from the liability under sub-section (1)—

(f) all persons having on the date on which they were called up for service more than three dependants:

Provided that any serviceman serving in the force who during his service acquires more than three dependants shall be exempted from further service.

For the purpose of this sub-section, the expression 'dependants' means—

(i) children under eighteen years old;

- (ii) spouse;
- (iii) illegitimate children, children over eighteen years old, parents, brothers and sisters, who are maintained by the serviceman”.

The application of the applicant was rejected on the ground that he did not have more than three dependants and the applicant was informed by letter dated 24.4.80, *exhibit* 2, addressed to his counsel and signed by the Director-General of the Ministry. This negative decision of the respondent Minister complained of was based on the advice of the Advisory Committee which is set up by virtue of section 4(4) of the Law; it is dated 18.4.80 and is red 13 of *exhibit* 5, the file of the Ministry. It reads as follows:

“The Committee having considered the present case finds that the facts are as stated in the report of the District Officer of Limassol dated 9.4.80 and that on these facts it can be based a refusal for exemption as there are not more than three dependant persons nor there exist special circumstances justifying the discharge”.

In the report of the District Officer of Limassol, which is red 12 of *exhibit* 5, it is stated that the applicant is a displaced person from Famagusta and got married in 1975 to his wife Eleni of Limassol aged 25. They have no immovable property and they reside in a house in Limassol paying £42.- per month as rent. Out of their marriage they have two minor children, namely, Loizos born on 31.10.76 and Mikaela born on 11.3.80. The applicant before his enlistment was employed by ELMA-SKO Ltd. in Limassol and was earning £150.- per month, which he was spending for the maintenance of his family. The wife is not working as she is looking after their two minor children. The mother of the applicant aged 58, has been divorced since 1968 and resides in the house of the applicant. According to the medical certificate of the District Medical Officer she is unable to work due to illness. She is receiving a monthly allowance of £18.- from the Welfare Department which is used for their maintenance.

Counsel for applicant in arguing his case relied on only one legal point, namely, that there is a misconception of section 4(3)(f) of the Law on the part of the respondent authority in

applying it to the facts of the case in deciding that the applicant had not more than three dependants by not considering his mother as his dependant because she is receiving a monthly allowance from the Welfare Department. He submitted that  
5 the present case falls within the four corners of the case of *Ioannou v. The Republic* (1978) 3 C.L.R. 276 decided by this Court and referred to the following passage at page 283:

10 "In the way this recourse was presented and argued before me by both counsel the only point that falls for consideration is whether on the established facts the mother of the applicant can be considered as his dependant. I must say straight away that the mother of the applicant cannot possibly live on a widow's monthly pension of £16.250  
15 mils when she has to pay only for rent of the flat in which she lives £12 per month. So, she is partly maintained by the applicant who, as it appears from the social investigation report, is the main source of maintenance of the family. Partial maintenance of parents, brothers or sisters falling short of total maintenance, would possibly  
20 suffice in order to entitle the conscript to exemption from military service. This view finds support in the case of *Antonios Christou Antoniou v. The Republic* (1967) 3 C.L.R. 259 at page 263 decided by the Full Bench of this Court. As regards his three unmarried sisters the applicant is  
25 in fact the only source of their maintenance".

Counsel for the respondent in his address very fairly stated that the monthly allowance the mother of the applicant is receiving does not amount to £18.- but £15,600 mils and rightly, in my view, conceded that she could not possibly be considered  
30 as a self supported person. He also stated that he finds it difficult to support the advice of the Advisory Committee to the Minister.

In the present case it is clear that the applicant is the only breadwinner of his wife and his two minor children. As regards  
35 his mother, she could not possibly live on the monthly allowance of £15,600 mils and the applicant, besides providing for her residence, he was also partly maintaining her to a considerable extent. As it is stated in the Antoniou case, *supra*, partial maintenance of parents, brothers or sisters, falling short of

total maintenance, would possibly suffice in order to entitle the conscript from exemption from military service.

Therefore, the Advisory Committee on the facts stated by the District Officer of Limassol in his report, found by it as true and correct, wrongly found that the applicant had not more than three dependants. This finding was due to a misconception of the Law and, consequently, the advice given to the Minister on which he acted and issued the decision complained of was a wrong one. 5

For the reasons stated above this recourse succeeds and the decision of the respondent Minister by which the applicant was not exempted from the obligation to serve in the National Guard is declared null and void. 10

On the question of costs, the respondent is adjudged to pay £25.- against the costs of the applicant. 15

*Sub judice decision annulled.  
Order for costs as above.*