

1982 May 22

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOTERIOS ECONOMIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF DEFENCE,
2. THE DISCIPLINARY BOARD,

Respondents.

(Case No. 291/79).

Army of the Republic—Officers of, on secondment to the National Guard—Subject to the provisions of the National Guard legislation as regards disciplinary matters—Section 2(3) of the Army of the Republic (Constitution, Enlistment and Discipline) (Amendment) Law, 1973 (Law 46/73).

The applicant, an officer in the Army of the Republic, who has been serving in the National Guard on secondment, was punished disciplinarily in disciplinary proceedings which were instituted, conducted and concluded under the relevant provisions of the Disciplinary Regulations of the Army of the Republic, 1962; and hence this recourse:

Held, that as the applicant was at all material times seconded for service in the National Guard he was subject, as regards disciplinary matters, to the relevant provisions of the National Guard legislation and not to the corresponding provisions of the Army of the Republic legislation (see section 2(3) of Law 46/73); that, therefore, the whole disciplinary process against the applicant which led to the sub judice decision was based on legislative provisions which were inapplicable to the applicant at all material times; accordingly the sub judice decision must be annulled.

Sub judice decision annulled.

Cases referred to:

Economides v. Republic (reported in this Part at p. 1156 post).

Recourse.

Recourse against the decision of the respondent Disciplinary Board dated 22nd June, 1979 and which was approved by the respondent Minister by virtue of which applicant was found guilty of, and punished for, disciplinary offences. 5

Applicant appeared in person.

M. Kyprianou, Senior Counsel of the Republic, for the respondent. 10

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicant challenges a decision of the respondent Disciplinary Board, dated 22nd June 1979, which was approved by the respondent Minister of Defence on 24th July 1979, and by virtue of which he was found guilty of, and punished for, disciplinary offences. 15

The applicant, who is an officer in the Army of the Republic, has, at all material times, been serving in the National Guard on secondment. 20

The disciplinary proceedings against the applicant were instituted, conducted and concluded under the relevant provisions of the Disciplinary Regulations of the Army of the Republic, 1962 (see No. 596, Third Supplement to the Official Gazette of 26th November 1962). 25

The applicant has contended that the Disciplinary Board which was constituted under the aforesaid Regulations had no competence to deal with the disciplinary offences allegedly committed by him, as the applicant at all material times was seconded for service in the National Guard and, therefore, by virtue of section 2(3) of the Army of the Republic (Constitution, Enlistment and Discipline) (Amendment) Law, 1973 (Law 46/73) he was subject, as regards disciplinary matters, to the relevant provisions of the National Guard legislation and not to the corresponding provisions of the Army of the Republic legislation. 30 35

For the reasons already given in my judgment in *Economides*

v. *The Republic* (case No. 352/78, in which judgment was delivered on 24th April 1982, and not reported yet*), which I need not repeat now and which should be deemed as incorporated in this judgment, I am of the view that the whole disciplinary process against the applicant, which led to the sub judice in the present proceedings decision of the Disciplinary Board, was, like the applicant's interdiction in connection with such process (which was the subject matter of the applicant's recourse in the *Economides* case, supra) based on legislative provisions which were inapplicable to the applicant at the material time, and, therefore, the said decision of the Disciplinary Board, as well as its approval by the Minister of Defence, have to be annulled as being contrary to law.

In view of my above conclusion there is no need to deal with any of the other issues which were raised in the present case.

In the light of all relevant circumstances I have decided to make no order as regards the costs of this case.

*Sub judice decision annulled.
No order as to costs.*

* Now reported in (1982) 3 C.L.R. 1156.