

1982 April 24

[TRIANTAFYLIDIS, P.]  
IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOTERIOS ECONOMIDES,

*Applicant,*

v.

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

*Respondent.*

(Case No. 352/78).

*Army of the Republic—Officers of—Serving on secondment in the  
National Guard—Disciplinary offences by—To be dealt with  
solely under the provisions of the National Guard legislation—  
Section 2(3) of the Army of the Republic (Constitution, Enlistment  
and Discipline) (Amendment) Law, 1973 (Law 46/73).*

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This recourse was directed against the refusal of the respondent to revoke and terminate applicant's interdiction in connection with disciplinary charges he was facing. Applicant at all material times, has been serving as an officer in the National Guard, on secondment from the Army of the Republic; and the disciplinary offences in respect of which he was interdicted were allegedly committed during such secondment. His main contention in this recourse was that the respondent Minister acted, in the matter of his interdiction, under legislative provisions applicable to those actually serving, at the material time, in the Army of the Republic (see the Army of the Republic (Constitution, Enlistment and Discipline) Law, 1962 (Law 16/62) and the relevant Regulations) and that such a course was not open to the respondent Minister—who had otherwise no power to interdict the applicant under the provisions of the National Guard legislation—inasmuch as it was excluded by subsection (3)\* of section 2 of the Army of the Republic (Constitution, Enlistment and Discipline) (Amendment) Law, 1973 (Law 46/73).

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\* Section 2(3) is quoted at p. 1158 post.

5 *Held*, that as the Army of the Republic and the National Guard are separate and distinct from each other, and function under different legislative provisions, it is impermissible and unreasonable to constitute subsection (3) in a manner not resulting in the conclusion that someone serving in the National Guard is, regarding disciplinary matters, subject solely to the provisions of the National Guard legislation; that after all, anybody serving in the National Guard, even if seconded from the Army of the Republic, has duties and obligations and is subject to the discipline provided for by the National Guard legislation and cannot, in case of any default on his part, be proceeded with disciplinarily under the provisions of the Army of the Republic legislation, which is quite different in some material respects from the National Guard legislation; that, therefore, once the interdiction of the applicant was, as effected, illegal then the refusal to revoke and terminate his interdiction was tainted by the same illegality and has to be annulled on this ground.

*Sub judice decision annulled.*

#### Recourse.

20 Recourse against the refusal of the respondent to revoke and terminate applicant's interdiction in connection with disciplinary charges which he was facing.

Applicant appeared in person.

25 *R. Gavrielides*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

30 TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicant complains against the refusal of the respondent Minister to revoke and terminate his interdiction in connection with disciplinary charges which he was facing. Such refusal was communicated to him by a letter dated 27th June 1978.

35 Arguments were heard, first, in relation to preliminary objections which were raised by counsel for the respondent, namely that the said letter of 27th June 1978 could not be made the subject of this recourse under Article 146 of the Constitution, because it is of a confirmatory nature or of a merely informative nature and, consequently, not of an executory nature.

On 21st May 1980 judgment was given by me dismissing the

aforesaid objections (see *Economides v. The Republic*, (1980) 3 C.L.R. C.L.R. 219); and such judgment has to be read in conjunction with the present judgment, as if its contents are incorporated herein.

At all material times the applicant has been serving as an officer in the National Guard, on secondment from the Army of the Republic; and the disciplinary offences in respect of which he was interdicted were allegedly committed during his service, on secondment, in the National Guard. 5

It appears that one of the main contentions of the applicant is that the respondent Minister acted, in the matter of his interdiction, under legislative provisions applicable to those actually serving, at the material time, in the Army of the Republic (see the Army of the Republic (Constitution, Enlistment and Discipline) Law, 1962 (Law 16/62) and the relevant Regulations) and that such a course was not open to the respondent Minister —(who had otherwise no power to interdict the applicant under the provisions of the National Guard legislation)—inasmuch as it was excluded by subsection (3) of section 2 of the Army of the Republic (Constitution, Enlistment and Discipline (Amendment) Law, 1973 (Law 46/73). The said subsection (3) reads as follows:— 10 15 20

“(3) Οἰονδήποτε μέλος ἀποσπώμενον δυνάμει τοῦ ἑδαφίου (2) δι’ ὑπηρεσίαν ἐν τῇ Ἀστυνομικῇ Δυνάμει Κύπρου ἢ ἐν τῇ Ἐθνικῇ Φρουρᾷ, διαρκούσης τῆς τοιαύτης ἀποσπάσεως, θὰ ἐκτελεῖ τοιαῦτα καθήκοντα καὶ ἀσκῆ τῆς τοιαύτης ἐξουσίας ὡς καθορίζονται εἰς τὸν περὶ Ἀστυνομίας Νόμον ἢ τοὺς περὶ τῆς Ἐθνικῆς Φρουρᾶς Νόμους τοῦ 1964 ἕως 1968 καὶ τοὺς βάσει τῶν Νόμων τούτων ἐκδιδομένους Κανονισμοὺς, ἀναλόγως τῆς περιπτώσεως, καὶ θὰ ὑπόκειται εἰς τὰς διατάξεις τῶν προειρημένων Νόμων καὶ Κανονισμῶν”. 25 30

“(3) Any member seconded under subsection (2) for service in the Cyprus Police Force or in the National Guard shall, during such secondment, carry out such duties and exercise such powers as they are laid down in the Police Law or the National Guard Laws 1964 to 1968 and the Regulations made under these Laws, as the case may be, and shall be subject to the provisions of the aforesaid Laws and Regulations”. 35

In my opinion the wording of the aforementioned subsection (3) is clear and unambiguous and supports the above referred to contention of the applicant. As the Army of the Republic and the National Guard are separate and distinct from each other, and function under different legislative provisions, it is impermissible and unreasonable to construe subsection (3) in a manner not resulting in the conclusion that someone serving in National Guard is, regarding disciplinary matters, subject solely to the provisions of the National Guard legislation. After all, anybody serving in the National Guard, even if seconded from the Army of the Republic, has duties and obligations and is subject to the discipline provided for by the National Guard legislation and cannot, in case of any default on his part, be proceeded with disciplinarily under the provisions of the Army of the Republic legislation, which is quite different in some material respects from the National Guard legislation.

From the written address of the applicant, which has not been contradicted in this respect by counsel for the respondent, it appears that on 29th October 1976 there was published in the Official Gazette of the Republic (see No. 218, in the Third Supplement, Part I) the Disciplinary (Amendment) Regulations of the National Guard of 1976, by means of which there was enacted an additional regulation—regulation 12A—enabling the respondent Minister, in case of a disciplinary offence by a member of the Army of the Republic who is serving on secondment in the National Guard, to decide, as he may deem fit, that the disciplinary process will take place either under the National Guard Disciplinary Regulations or under the Army of the Republic Disciplinary Regulations.

As, however, the aforesaid Regulations of 1976 were not placed, for approval, before the House of Representatives, prior to their publication, as required by section 23(3) of the National Guard legislation, they were revoked on 3rd May 1977; and, then, eventually, they were placed before the House of Representatives but they were not approved and were rejected on 7th July 1977.

The above described abortive attempt to amend the National Guard legislation by means of the addition of regulation 12A indicates very significantly that the Government itself did not

think that on a proper construction of subsection (3) of section 2 of Law 46/73 it was possible to resort to the Army of the Republic relevant legislation in connection with a disciplinary offence committed by a member of the Army of the Republic while he was serving on secondment with the National Guard; otherwise there would have been no need to try to insert regulation 12A in the relevant legislation for the National Guard. 5

So, when the sub judice decision was communicated to the applicant on 27th June 1978 the position was that the applicant had been interdicted unlawfully due to the wrongful application for such a purpose, by the respondent Minister, of legislative provisions which were applicable to those actually serving at that time in the Army of the Republic and not, also, to a member of such Army who was at that time serving on secondment in the National Guard, like the applicant; and once the interdiction of the applicant was, as effected, illegal then the refusal to revoke and terminate his interdiction was tainted by the same illegality and has to be annulled on this ground. 10 15

Thus, this recourse succeeds; but, in all the circumstances, I do not propose to make an order as to its costs. 20

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