

1986 September 29

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

NICOS TAVROS.

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE MINISTER OF DEFENCE,

*Respondent.*

(Case No. 426/79).

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*Administrative Law—Discretionary power—The Army of the Republic (Composition, Recruiting and Discipline) Law, 8/61 as amended—Section 8(2)—Resignation of sergeants—Minister of Defence refused the required approval—*  
5 *Government policy one of the factors taken into consideration—As Minister did not feel bound by such policy, it cannot be said that he did not exercise his discretion*

By means of this recourse the applicant challenges the  
10 decision, whereby his application under s. 8(2) of Law 8/61, as amended, to be allowed to resign from his post as a regular sergeant was turned down. In taking this decision the respondent Minister took into consideration the declared policy of the Government, contained in a decision of the Council of Ministers to the effect that the approval of applications for resignation by regular officers  
15 and sergeants be suspended.

*Held, dismissing the recourse,* that as the respondent  
20 Minister did not consider himself bound by the said decision of the Council of Ministers, but simply considered such decision as one of the factors to be taken into

account, it cannot be said that he did not exercise his discretion under s. 8(2) of the said law.

*Recourse dismissed.*

*No order as to costs.*

**Recourse.**

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Recourse against the refusal of the respondent to accept applicant's resignation from the ranks of the Cyprus Army.

*N. Clerides*, for the applicant.

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

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*Cur adv. vult*

MALACHTOS J. read the following judgment. The applicant in this recourse which is made under Article 146 of the Constitution, claims a declaration of the Court that the decision of the respondent Minister of Interior and Defence, not to accept his resignation from the ranks of the Cyprus Army, contained in his letter to the applicant's counsel, dated 29th October, 1979, is null and void and of no legal effect whatsoever.

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The relevant facts of the case are briefly as follows:

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The applicant, a regular sergeant serving in the Cyprus Army by letter dated 20th October, 1979, applied to the respondent Minister, through his advocate, to be allowed to resign. This application was made under section 8(2) of the Army of the Republic (Composition, Recruiting and Discipline) Law, (Law 8/61, as amended), which provides that a sergeant is entitled to resign after the approval of the Minister of Defence.

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By letter dated 29th October, 1979, addressed to the applicant's counsel, the Minister of Defence rejected the application of the applicant. This letter reads as follows:

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"I refer to your letter dated 20th October, 1979 on behalf of the regular sergeant Nicos Michael Tavrou, reg. No. 2772. I have carefully considered the application. However, in the exercise of my powers

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by virtue of section 8(2) of the Army of the Republic Law, and taking into consideration the declared policy of the Government of the Republic, which is contained in the decision of the Council of Ministers under No. 16375 of the 24th November, 1977, and for the reasons referred to in the said decision, I regret to inform you that I cannot approve your resignation”.

The Decision No. 16375 of the 24th November, 1977, to which reference was made by the Minister, is the following:

“The Council decided that as long as the present situation exists, the approval of applications for resignation submitted by regular officers and sergeants is suspended, as the presence of all those serving at the time is considered as absolutely necessary”.

The grounds of law on which the recourse is based, as stated therein, are the following:

1. The decision of the Council of Ministers No. 16375 dated 24.11.77, on which the respondent purported to act is invalid and hence respondent's decision null and void in that:-

(a) it conflicts with section 8 of Law 8/1961:

(b) it was not published in the Official Gazette; and

2. The respondent exercised the discretionary power vested in him under section 8(2) of the Law under circumstances amounting to abuse of power in that he felt himself bound by decision No. 16375 of the 24.11.77 of the Council of Ministers, thus failing to exercise any discretion in the matter based in the particular circumstances of the present case.

Counsel for applicant, however, in arguing his case before the Court, relied only on the second ground of Law. Therefore, the only question that falls for consideration in this recourse is whether the Minister in taking the decision complained of felt bound by the decision of the Council of

Ministers to reject the application of the applicant, thus not exercising his own discretion in the matter.

The answer to the above question, in my view, is to be found in the letter of the 29th October, 1979, addressed by the respondent Minister to counsel for applicant. There is nothing in the said letter to indicate that the Minister felt bound by the decision of the Council of Ministers. but on the contrary, it is stated therein that the application of the applicant was carefully considered. What may reasonably be inferred from that letter is that one of the factors that were taken into account in rejecting the application of the applicant was the decision of the Council of Ministers. So, it cannot be said that the respondent Minister in issuing the decision complained of rubber stamped the decision of the Council of Ministers and did not exercise his discretion under section 8(2) of the Law.

This recourse, therefore, fails and is hereby dismissed.

There will be no order as to costs.

*Recourse dismissed.*

*No order as to costs.*