1966
Feb. 26,
Mar. 9, 15, 19
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YIANGOS P. HJISTEPHANOU
and
THE REPUBLIC OF CYPRUS THROUGH THE MINISTRY OF INTERIOR

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

YIANGOS P. HJISTEPHANOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF INTERIOR,

Respondent.

(Case No.23/66).

Military Service—National Guard—Call up for enlistment—Exemption from service on the ground of maintenance of dependants—Competence—The competent organ to decide on such exemptions is not the Minister of Interior but the appropriate Conscription Board (infra)—The National Guard Law, 1964 (Law No. 20 of 1964) (as amended by Laws Nos. 49/64, 26/65, 44/65), sections 4(3)(f), 4A,6, 7 and 11—The Order of the Minister of Interior, made under section 7 of the Law, setting up the appropriate Conscription Boards and published as Notification 139 in the Official Gazette, Supplement No. 3, of the 9th June, 1964—The Decision of the Council of Ministers published as Notification 367 in the Official Gazette, Supplement No. 3 of the 24th September, 1964, put into effect by the Order of the Minister of Interior published as Notification 135 in the Official Gazette, Supplement No. 3, of the 18th March, 1965—Article 58 of the Constitution—Actually it is not stated in the aforesaid section 4 by which organ such exemptions from military service, on the ground of maintenance of dependants, are to be granted—In the circumstances the proper organ to decide on such exemptions under section 4(3)(f) (supra) would be, by reasonable construction of the whole Law No. 20 of 1964 (supra), the organ responsible for effecting enlistments i.e. the appropriate, in each case, Conscription Board—And not the Minister of Interior—Who can only take action in matters relevant to the application of the said Law No. 20 of 1964, when this is so provided by that Law, or when such task is delegated to him in the proper manner by the Council of Ministers in relation to matters for which the Council is competent under such Law—

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But in the present case it is not necessary to construe the relevant legislation in order to find the proper organ for the purpose of such exemptions—Because the Council of Ministers itself, in calling up the class of applicant, has specified expressly in its decision published as Notification 367 (supra) that the exemptions on the ground of maintenance of dependants are to be determined by the appropriate Conscription Board—This was a course not prevented, expressly or impliedly, by any provision of the relevant legislation, a course consistent with the proper construction thereof, namely section 6 of the said Law—See, also, under the following headings.

Administrative Law—Competence of administrative organs—Powers of the Court on a recourse under Article 146 of the Constitution in this respect—The question of the competence of the organ concerned is a matter which may be raised ex proprio motu by the Court itself—Precisely as it did in the present case, eventually annulling the sub judice decision of the Minister of Interior on the ground that the matter was not within his competence (supra).

Constitutional and Administrative Law—Ministers—Competence and powers—Article 58 of the Constitution—Neither under this Article nor under the National Guard Law, 1964 (Law No. 20 of 1964) (supra), the Minister of Interior has any competence to take decisions on exemptions from military service on the ground of maintenance of dependants under section 4(3)(f) of the Law (supra)—On the other hand the Minister of Interior under his general executive powers is empowered to set up an Advisory Committee to advise him on certain matters—Council of Ministers—Powers under section 6 of the aforesaid Law No. 20 of 1964 (supra) to decree that the appropriate Conscription Board should take decisions on exemptions under section 4(3)(f) as aforesaid—See, also, above under Military Service; and, also, herebelow.

Council of Ministers—Powers under the National Guard Law, 1964 (supra)—See above under Military Service; Constitutional and Administrative Law.

Ministers—Minister of Interior—Competence—Article 58 of the Constitution—See above under Military Service; Constitutional and Administrative Law.

Competence—Question of competence of the administrative organ concerned may be raised by the administrative court ex proprio motu—See above under Administrative Law.

The applicant in this recourse sought for a declaration that the decision of the Minister of Interior not to exempt him from Military Service in the National Guard is null and void and of no effect whatsoever.

Applicant applied to the Minister of Interior, through the District Officer Larnaca, on the 30th September, 1965, for exemption from Military Service on the ground that he was the supporter of his family and the District Officer in forwarding the application to the Ministry of Interior stated that applicant was asking not to enlist, in order to be able to maintain his large family and recommended that applicant be granted a suspension for a year. Applicant's application was dealt with by the Advisory Committee set up by the Minister of Interior for the purpose of advising him on cases of application for exemption from military service. This Committee has not been set up under any specific legislative provision, but has been set up by the Minister of Interior under his general executive powers. After applicant's application was placed before the various members of the Committee he was informed by letter dated the 18th December, 1965, that his application was rejected; he applied for reconsideration of his case but again his application was rejected and he was informed of such rejection by letter dated 24th January, 1966. It is against this decision that applicant complains by this recourse filed on the 3rd February, 1966.

Applicant's application for exemption was based on the provisions of section 4(3)(f) of the National Guard Law 1964 (Law 20/64), as amended by the National Guard (Amendment) Law 1965 (Law 26/65) and the National Guard (Amendment) (No. 3) Law 1965 (Law 44/65). The effect of such provisions being that a person called up for military service is exempted if he has more than three dependants; and as applicant does not have any children or a wife he can only be exempted under the aforesaid section 4(3)(f) if he can be found to be maintaining his parents and his younger brother and sisters who altogether are more than three.

The first question (raised by the Court *ex proprio motu)* which called for decision was whether or not the Minister of Interior had competence to deal with an application for exemption under section 4(3)(f) *supra.* In the relevant decision of the Council of Ministers *(infra),* whereby applicant's class was called up to enlist, it was stated, *inter alia,* that those maintaining at least four dependants are to be exempted from the call up on production of material proving this to the satisfaction of the appropriate Conscription Board *(infra).*

It was argued by counsel for the respondent that the matter of such exemptions on the ground of maintenance of dependants is within the competence of the Minister of Interior who is the organ responsible for the application of the National Guard legislation, both by virtue of the whole context of the National Guard Law, 1964, (Law No. 20 of 1964) and of Article 58 of the Constitution.

Article 58 of the Constitution reads as follows:-

"1. A Minister is the Head of his Ministry.

2. Subject to the executive power expressly reserved, under this Constitution, to the President and the Vice-President of the Republic, acting either separately or conjointly, and to the Council of Ministers, the executive power exercised by each Minister includes the following matters:-

(*a*) the execution of laws relating to, and the administration of all matters and affairs usually falling within, the domain of his Ministry;

(*b*) preparation of orders or regulations concerning his Ministry for submission to the Council of Ministers;

(*c*) the issuing of directions and general instructions for the carrying out of the provisions of any law relating to his Ministry and of any order or regulation under such law;

(*d*) the preparation for submission to the Council of Ministers of the part of the Budget of the Republic relating to his Ministry".

The Court in annulling the *sub judice* decision:-

Held, (I). On the question of the competence of the Mini-

ster of Interior to take the sub judice decision:

(1) The question of the competence of the organ concerned is a matter which may be raised *ex proprio motu* by an administrative Court (Stasinopoulos, The Law of Administrative Disputes, (1964) p. 251). In the present case this point has been so raised *ex proprio motu* by the Court.

(2) I am of the opinion that there can be no doubt that exemption on the ground of maintenance of dependants, as claimed by applicant, was a matter to be obtained by decision of the appropriate Conscription Board in this case the Conscription Board for the District of Larnaca which was set up by order made by the Ministry of Interior and published as Notification 139 in the official Gazette Supplement No. 3 of the 9th June, 1964, under section 7 of Law 20/1964.

(3)(*a*) I cannot accept the argument of counsel for the respondent to the effect that the matter is within the competence of the Minister of Interior who is responsible for the application of the National Guard legislation, both by virtue of the whole context of the said Law No. 20 of 1964 (*supra*) and of Article 58 of the Constitution *(supra)*. I am of the view that the Minister of Interior can only take action in matters relevant to the application of the said Law when this is so provided by such Law, or when such task is delegated to him in the proper manner by the Council of Ministers in relation to matters for which the Council of Ministers is competent under such Law.

(*b*) There is nothing in section 4 of the said Law No. 20 of 1964 *(supra)* to the effect that exemptions under it are to be granted by the Minister of Interior. Actually it is not stated by which organ such exemptions are to be granted.

(*c*) I would think that the proper organ to decide on exemptions under the said section 4(3)(*f*) would be, by reasonable construction of the whole Law No. 20 of 1964 *(supra)*, the organ responsible for effecting enlistments i.e. the appropriate, in each case, Conscription Board.

(4)(*a*) But in the present case, it is not necessary to construe the relevant legislation in order to find the proper organ for the purpose, because the Council of Ministers

itself, in calling up the class of applicant has specified expressly in its decision, published as Notification 367 on the 24th September, 1964 *(supra)*, that exemption on the ground of maintenance of dependants is to be determined by the appropriate Conscription Board. This was a course not prevented expressly or impliedly by any provision of the relevant legislation, a course consistent, in my opinion, with the proper construction thereof.

(*b*) Thus the Council of Ministers, by the decision of which the Minister of Interior is bound, quite properly decreed, as it did, relating to exemption on the ground of maintenance of dependants; making provision for a matter such as this was, in my opinion, properly incidental to, and covered by, the powers of the Council under section 6 of the said Law No. 20 of 1964 *(supra)*.

(5) It follows, that the decision of the Minister of Interior, taken in a matter which was not within his competence, has to be annulled.

Held, (II). As to the merits:

(1) Applicant has to have his claim for exemption decided by the appropriate Conscription Board. As I have, however, heard this case, also, on the merits of the *sub judice* decision, I shall proceed, too, to give my findings regarding such merits, assuming, for the purpose of what follows in this judgment that—contrary to the above—the Minister of Interior was competent to decide on the matter.

(2) Regarding the view of the Committee that section 4(3)(*f*) did not entitle, in the circumstances, Applicant to exemption, I think that in this Case, such view was fairly open to it and properly within the ambit of section 4(3)(*f*). By saying this I should not be misunderstood to mean that there can never be a case in which the enlistment of a person managing a large property could result in depriving of maintenance members of his family living from the income of such property, but in the present Case, bearing in mind that the father, though not fit for heavy work, is nevertheless in a position to supervise the property and manage it to a certain extent, and, also, bearing in mind that what will be lacking, through the enlistment of Applicant, as his contribution in the form of manual work, can be

replaced by salaried help from outside, I am of the opinion that the application of section 4(3) (*f*) to the facts of this Case, as proposed in the relevant minutes of the Advisory Committee *(exhibit 13)* was not unwarranted in the circumstances. In taking this view I have also borne in mind that the enlistment of Applicant will be only a temporary handicap for the management of the property and that even while he is serving there may be possibilities for him to obtain leave and attend to any very urgent matter which may arise and which his father may not be in a position to handle.

(3)(*a*) On the 25th January, 1966, there was received in the Ministry of Interior a letter from the District Officer, Larnaca, dated the 21st January, 1966, *(exhibit 14)*, in which the District Officer stated that the applicant was, beyond any doubt, responsible for the maintenance of the family, and concluded by saying that there was a real danger that, if a salaried person were to be employed in the place of applicant, after applicant's enlistment, the family might be involved in serious financial troubles, stressing that he had no doubt that section 4(3)(*f*) of the Law *(supra)* was applicable to this case.

(b) Without holding that, had *exhibit 14* been before him, then he ought necessarily to have reached a different decision, I do think that *exhibit 14* constitutes a factor which has to be given due weight in reaching a decision on the application of Applicant for exemption. Had the Minister been the competent organ I would have pointed out that *exhibit 14* was a proper ground for considering whether to confirm or rescind his decision already taken on the basis of *exhibit 13*, but as he is not, in my opinion, the proper organ for the purpose, the effect of *exhibit 14* will have to be weighed by the appropriate organ, the Conscription Board for the Larnaca District, when it comes to deal with Applicant's claim for exemption.

Held, (III). With regard to costs:

Regarding costs I have decided to make no order as to costs, especially as it was Applicant himself who moved the Minister of Interior to decide on his application for exemption.

Decision complained of declared null and void. No order as to costs.

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Recourse.

Recourse against the decision of the Respondent not to exempt Applicant from military service in the National Guard.

L. Clerides, for the Applicant.

M. Spanos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:—

TRIANTAFYLLIDES, J.: In this recourse the Applicant seeks a declaration that the decision of the Minister of Interior not to exempt him from military service in the National Guard is *null* and *void* and of no effect whatsoever.

Such decision was communicated to Applicant by letter dated the 24th January, 1966 *(exhibit 1)*.

The history of the matter is as follows:—

Applicant who was born in 1941, and had been originally called up for enlistment in March, 1965, was granted a suspension until September, 1965, while his younger brother was serving in the National Guard (see *exhibit 5)*. His brother was demobilized on the 16th September, 1965 in order to proceed abroad for studies and Applicant's suspension came thus to an end.

On the 30th September, 1965, Applicant applied in writing to the Minister of the Interior *(exhibit 2)* for exemption from military service on the ground of family circumstances, which apparently had already been placed before the authorities by a previous application of Applicant, dated the 26th March, 1965, which is not before the Court.

Applicant's application for exemption was transmitted to the Ministry of Interior by the District Officer, Larnaca, who in a covering letter dated the 11th October, 1965 *(exhibit 8)* stated that Applicant was asking not to enlist, in order to be able to maintain his large family.

Applicant's application *(exhibit 2)* was supported by a certificate of the Village Authority of Athienou, dated 22nd June, 1965 *(exhibit 7)* stating that the family of Applicant, who is unmarried, consists of his father (born in 1919) mother

(born in 1918) his—aforesaid—younger brother (born in 1943) and four younger sisters, all unmarried (born between 1946 and 1956).

There was also attached a medical certificate *(exhibit 6)* issued by the Medical Officer, Athienou, on the 2nd July, 1965, whereby it was certified that the father of Applicant was suffering from chronic bronchitis with cardiac insufficiency and was, thus, unfit for any heavy or manual work.

As stated in the afore-mentioned covering letter of the District Officer Larnaca *(exhibit 8)* the Applicant was, in the circumstances, the supporter of his whole family; as a result the District Officer recommended that Applicant be granted a suspension for a year.

The application of Applicant was dealt with by the Advisory Committee set up by the Minister of Interior for the purpose of advising him on cases of applications for exemption from military service.

This Committee, which has not been set up under any specific legislative provision, but has been set up by the Minister of Interior under his general executive powers, consists, in relation to each District, of a Counsel of the Republic, Mr. P. Paschalis, as Chairman, of the District Officer of the District concerned and of the Chief Immigration Officer (see copy of letter of the Minister of Interior addressed to, *inter alia*, Mr. Paschalis on the 11th June, 1964—*exhibit 15)*. As stated by counsel for Respondent, a representative of the Ministry of Labour and Social Insurance attends, also, the meetings of the Advisory Committee.

As a result of the existence of the said Committee the application of Applicant for exemption—together with the covering letter of the District Officer, Larnaca—was placed before the Chief Immigration Officer who suggested that it should be discussed. Then it went before Mr. Paschalis who raised certain queries *(exhibit 9)* and as a result the matter went back to the District Officer, Larnaca, who wrote to the Ministry of Interior on the 18th November, 1965 *(exhibit 10)* stating, *inter alia*, that the father of Applicant, though not entirely unfit for work, could not by himself earn the living of the family, that he could only do very light agricultural work and that his son, the Applicant, was the moving spirit behind all the work done in relation to 700 donums of land,

out of which 400 donums were leased from others; the Applicant was driving the tractor and the combine harvester and was also arranging purchases and sales.

The District Officer further stated that the situation could not be met through the employment of a salaried employee in the place of Applicant, because bad management could definitely involve the family in serious financial loss, and he suggested that as Applicant could be considered as the major supporter of the family, section 4(3) (στ)—4(3) (f)—of the National Guard Law was applicable to him.

Mr. Paschalis, according to a note made on *exhibit 10*, disagreed with the above and eventually Mr. Matsoukaris, an official of the Ministry of Interior, made on the 30th November, 1965, a note on the said exhibit as follows: "Not exempted".

It does not appear that the Minister dealt, himself, with this matter.

The rejection of Applicant's application was communicated to him by letter dated 1st December, 1965 *(exhibit 3)*.

Then Applicant applied for a reconsideration of his case (see *exhibit 4*). On the 11th January, 1966, the District Officer, Larnaca, wrote again to the Ministry of Interior *(exhibit 11)* stating that Applicant had visited him accordingly and he proceeded to point out once again that the father of the Applicant was unfit for work, that Applicant was the only supporter of the family and that, therefore, he was entitled under section 4(3) *(f)* of the National Guard Law to be exempted.

The matter came, thus, once again before the Advisory Committee and as a result Applicant's father was examined by Dr. Kalbian, on the 18th January, 1966, who certified *(exhibit 12)* that he was suffering from "an anxiety neurosis and chronic bronchitis" and that he was "unfit for any heavy work".

Then on the 22nd January, 1966, the matter was considered at a meeting of the Advisory Committee, at which the District Officer, Larnaca, was not present, but before which were placed his previous letters *(exhibits 8, 10, 11)*. The view was taken (see minute *exhibit 13)*, in the light of the certificate of Dr. Kalbian, that the father was in a position to manage

and supervise the immovable property concerned and that the fact that Applicant was the driver of the tractor and of the combine harvester and was arranging sales and purchases did not render him the supporter of his family—or the other members of the family his dependants; it was added, *in exhibit 13*, which is signed by Mr. Paschalis, that the financial position of the father was such that he could employ one or more salaried employees to do what Applicant himself was doing. In conclusion the Committee stated that Applicant's case could in no way be regarded as falling under section 4(3) *(f)* of the Law.

Then follows on the same document, *exhibit 13*, a note dated 23rd January, 1966, initialled by Mr. Andreas Papagavriel, an official of the Ministry of Interior, which, in English translation, reads: "You are aware of this case. Since a week or more ago I have requested from the District Officer Larnaca a new evaluation of the case but it has not yet been sent. I have, however, communicated with him by telephone and a new report by him would not add anything. The Committee was definite in its view that Applicant cannot be exempted. As I reached the previous decision, I request that you should confirm it".

From the above it appears that the previous decision, which was communicated to Applicant on the 1st December, 1965, was in fact reached by Mr. Papagavriel, and not by the Minister.

The above-quoted note of Mr. Papagavriel was addressed to the Director-General of the Ministry of Interior who noted next to it on the 24th January, 1966 that he was in agreement.

Above this note of the Director-General there appears another note, this time by the Minister of Interior himself, stating that he adopts the recommendations of the Committee. This note is initialled by the Minister.

So, Applicant was informed by letter of the 24th January, 1966 *(exhibit 1)* that he would not be exempted.

On the 25th January, 1966, there was received in the Ministry of Interior a letter from the District Officer, Larnaca, dated 21st January, 1966, *(exhibit 14)*, who referred to a telephone conversation with Mr. Papagavriel—on the 21st January—and stated that he had re-examined the case of

Applicant, that he was satisfied that the family circumstances of Applicant were as stated in his letter of the 11th January *(exhibit 11)*, that the Applicant, who was the elder son of the family, was beyond any doubt responsible for the maintenance of the family—due to the illness of the father; after referring to what he had stated in his letter of the 18th November, 1965 *(exhibit 8)*, the District Officer concluded by saying that there was a real danger that, if a salaried person were to be employed in the place of Applicant, after Applicant's enlistment, the family might be involved in serious financial destruction, and he stressed that he had no doubt that section 4(3) *(f)* of the Law was applicable to this case.

Mr. Papagavriel noted on *exhibit 14* that nothing new had been brought to light and the Director-General of the Ministry, endorsed this on the 25th January, 1966, by noting simply "Thank you". *Exhibit 14* was never placed before the Minister of the Interior, himself.

This recourse was filed on the 3rd February, 1966 and on the 15th February, 1966 Applicant applied for a provisional order directing that he should not enlist in the National Guard until the hearing and final determination of this recourse.

On the 19th February, 1966 it was decided, instead, to give an early hearing to this Case, rather than to proceed with the matter of the application for a provisional order.

The hearing took place on the 26th February, 1966 and the 9th March, 1966, and it was re-opened on the 15th March, 1966 by direction of the Court, for the purpose of inquiring into the matter of the competence of the Minister of Interior to deal with the application of Applicant for exemption—a point raised *ex proprio motu* by the Court.

The question of the competence of the organ concerned is a matter which may be raised *ex proprio motu* by an administrative court (Stasinopoulos on the Law of Administrative Disputes (1964), p. 251).

The relevant legislative provision on which Applicant's application for exemption is based is section 4(3) *(f)* of the National Guard Law 1964 (Law 20/64), as amended by the National Guard (Amendment) Law 1965 (Law 26/55) and the National Guard (Amendment) (No. 3) Law 1965 (Law 44/65).

The effect of such provision is that a person called up for military service is exempted if he has more than three dependants. Dependants are defined as meaning children under the age of 18 or a spouse; also, illegitimate children, children over the age of 18, parents, brothers or sisters who are *maintained* by the person who has been called up.

As Applicant does not have any children or a wife he can only be exempted under section 4(3) *(f)* if he can be found to be maintaining his parents and his younger brother and sisters, who all together are more than three.

The first question to be decided is whether or not the Minister of Interior had competence to deal with an application for exemption under section 4(3) *(f)*.

In this respect it is necessary to note that the Applicant was called up to enlist, through the calling up of his class, by means of a decision of the Council of Ministers which was published as Notification 367 in the official Gazette, Supplement No. 3, of the 24th September, 1964, and which was put into effect by an order of the Minister of Interior published as Notification 135 in the official Gazette, Supplement No.3 of the 18th March, 1965.

In the decision of the Council of Ministers it is stated that those maintaining at least four dependants are to be exempted from the call up on production of material proving this to the satisfaction of the appropriate Conscription Board.

I am, therefore, of the opinion that there can be no doubt that exemption on the ground of maintenance of dependants, as claimed by Applicant, was a matter to be obtained by decision of the appropriate Conscription Board; in this case the Conscription Board for the District of Larnaca which was set up by order made by the Minister of Interior and published as Notification 139 in the official Gazette, Supplement No.3 of the 9th June, 1964, under section 7 of Law 20/64.

Counsel for Respondent did not appear to dispute that at the time of the call up of Applicant it was the Conscription Board which was the appropriate organ for the purpose of dealing with his application for exemption, but he argued that subsequently, due to the amendment of section 4 of Law 20/64 by section 2 of Law 26/65, on the 7th June, 1965, and the inclusion thereby in the said section 4 of the relevant

ground of exemption viz. maintenance of dependants, the question of deciding on such an application for exemption became a matter for the Minister of Interior who is responsible for the application of the National Guard legislation, both by virtue of the whole context of Law 20/64 and of Article 58 of the Constitution.

He drew attention, also, to section 4(A) of Law 20/64—which was introduced by the amending Law 49/64—as supporting the view that the Minister of the Interior is responsible for the application of Law 20/64.

Counsel for Applicant said nothing on this point.

I cannot accept the above argument of counsel for Respondent because, in the first place, I am of the view that the Minister of Interior can only take action in matters relevant to the application of Law 20/64 when this is so provided by such Law, or when such task is delegated to him in the proper manner by the Council of Ministers in relation to matters for which the Council of Ministers is competent, under such Law.

There is nothing in section 4 of Law 20/64 to the effect that exemptions under it are to be granted by the Minister of Interior. Actually it is not stated by which organ such exemptions are to be granted.

I would think that the proper organ to decide on exemptions under section 4 would be, by reasonable construction of the whole Law 20/64, the organ responsible for effecting the enlistments *i.e.* the appropriate, in each case, Conscription Board.

But, in the present Case, it is not necessary to construe the relevant legislation in order to find the proper organ for the purpose, because the Council of Ministers itself, in calling up the class of Applicant has specified expressly in its decision, published as aforesaid on the 24th September, 1964, that exemption on the ground of maintenance of dependants is to be determined by the appropriate Conscription Board. This was a course not prevented expressly or impliedly by any provision of the relevant legislation, a course consistent in my opinion with the proper construction thereof, and thus the Council of Ministers, in which the Minister of Interior participates and by the decisions of which he is bound, quite properly decreed, as it did, relating to exemption on the

ground of maintenance of dependants; making provision for a matter such as this was, in my opinion, properly incidental to, and covered by, the powers of the Council under section 6 of Law 20/64.

The Minister of Interior, in this case, being faced with an application to him by Applicant for exemption proceeded to deal with it; but, for the above reasons, the matter was not within his competence and his decision has accordingly to be annulled.

Applicant has to have his claim for exemption decided by the appropriate Conscription Board; and as it appears from his application for exemption, *exhibit 2*, he has already produced before such Board material relevant to his said claim for exemption. It is now for such Board to decide the matter.

As I have, however, heard this Case, also, on the merits of the sub judice decision, I shall proceed, too, to give my findings regarding such merits, assuming, for the purpose of what follows in this Judgment that—contrary to the above—the Minister of Interior was competent to decide on the matter.

In examining the validity of the sub judice decision I have examined first the steps which preceded it in order to ascertain whether the validity or invalidity of anyone of them could have any effect on the validity of such decision.

I have reached the conclusion that *exhibit 5*, the suspension of military service certificate, granted to Applicant on the 26th March, 1965, appears, in the form in which it was granted, not to be a valid suspension certificate, because, at the time, the relevant provision, section 11 of Law 20/64, had not yet been amended so as to enable such a suspension to be granted; such amendment was effected subsequently by section 9 of Law 26/65, in June, 1965.

But the invalidity of *exhibit 5* cannot in my opinion have any direct or indirect relationship to the validity of the sub judice decision because all that was done by *exhibit 5* was to postpone the time when Applicant was due to enlist and the effect of *exhibit 5* had already ceased in September, 1965, prior to the application *(exhibit 2)* of Applicant for exemption.

I have also reached the conclusion that the first rejection

of Applicant's application, communicated to him on the 1st December, 1965, by means of *exhibit 3*, was invalidly decided upon, because it was not so decided by the Minister of Interior himself but by the aforesaid Mr. Papagavriel; this appeared to be so from Mr. Papagavriel's note on *exhibit 13*.

I have taken the view, however, that the invalidity of the said first decision—or, in the circumstances, the non-existence, really, of a proper decision at all, at that stage—cannot affect the validity of the later decision, the sub judice one, as communicated by *exhibit 1*, because I am satisfied, from the relevant material before me, that the said decision is not a mere confirmation or ratification of the previous action which led to *exhibit 3*, but a decision reached after a full and proper inquiry into the whole matter.

Coming now to the sub judice decision, itself, as communicated by *exhibit 1*, I have considered to what extent it may have been affected by the role played in the matter by the Advisory Committee, set up, as above, by the Minister of Interior.

If I were to find that the Minister had given up his powers in the matter and entrusted the exercise of his discretion, under the relevant legislation, to such Committee, then this would be in the circumstances contrary to law.

But I am satisfied that the true view of the position is that the Minister has set up such Committee in order to examine and process cases of exemption so that he could find ready before him the necessary material on which to reach his own decisions. In other words this Committee, which is presided over by a legally trained person and in which participates the District Officer of the District concerned in each case, and thus has the means of placing before the Minister all relevant material both from the legal and factual points of view, does what the Minister could have lawfully asked his subordinate staff in the Ministry itself to do i.e. to examine and prepare cases and then place them before him for decision.

Though, therefore, it would have been much more desirable from the regular administration point of view if such Advisory Committee had been set up under the sanction of relevant legislation and was functioning under regulations made for the purpose, nevertheless, I am of the view that in the way in which it has dealt with Applicant's application,

it did not in any way prevent the Minister from reaching a decision himself in the matter of the exemption of Applicant, but on the contrary it has facilitated the exercise of his discretion by ensuring that it would be based on all relevant material.

There remains next to examine whether or not such Committee, in making its recommendations, has placed before the Minister correctly the legal and factual aspects of Applicant's case; if such recommendations were based on a legal or a factual misconception then necessarily the relevant decision of the Minister of Interior is invalid accordingly.

I am of the opinion that the recommendations of the Committee, as framed in *exhibit 13*, constitute a fair presentation and assessment of the factual situation, as matters stood when *exhibit 13* came to be signed by the Chairman of the Advisory Committee.

In this respect I have examined whether the health of the father of Applicant has been correctly looked upon and I have reached the conclusion that there is not really any substantial difference between the view expressed by Dr. Kalbian, and adopted by the Committee, and the view of Dr. Pavlides, who has been called by Applicant as witness.

The need for the services of Applicant, in relation to the management of the family property, has, also, been correctly viewed, irrespective of the fact that the Committee has disagreed with the District Officer, Larnaca, regarding the possible consequences of the absence of Applicant from the management of such property; I am of the opinion that the evaluation made by the Committee in this respect was reasonably open to it in the circumstances. The Committee has drawn attention in its minute, *exhibit 13*, to the views of the District Officer, Larnaca, as contained in his three letters referred to therein, and thus the Minister could not have been misled in any way by the Committee on this point.

Regarding the view of the Committee that section 4(3)*(f)* did not entitle, in the circumstances, Applicant to exemption, I think that, in this Case, such view was fairly open to it and properly within the ambit of section 4(3) *(f)*. By saying this I should not be misunderstood to mean that there can never be a case in which the enlistment of a person managing a a large property could result in depriving of maintenance

members of his family living from the income of such property, but in the present Case, bearing in mind that the father, though not fit for heavy work, is, nevertheless, in a position to supervise the property and manage it to a certain extent, and, also, bearing in mind that what will be lacking, through the enlistment of Applicant, as his contribution in the form of manual work, can be replaced by salaried help from outside, I am of the opinion that the application of section 4(3) *(f)* to the facts of this Case, as proposed in *exhibit 13* was not unwarranted in the circumstances. In taking this view I have also borne in mind that the enlistment of Applicant will be only a temporary handicap for the management of the property and that even while he is serving there may be possibilities for him to obtain leave and attend to any very urgent matter which may arise and which his father may not be in a position to handle.

Thus, had the Minister of Interior had competence to take the decision which he himself took in the matter, on the basis of the properly valid, in the circumstances, views and recommendations of the Advisory Committee, I would have dismissed this recourse and not interfered with such decision. But as I have found that he was not the competent organ, this recourse has to succeed on this ground and his decision annulled accordingly.

There is one matter which has to be given due weight when the claim of Applicant for exemption comes to be considered by the appropriate organ in future. This is the letter of the District Officer, *exhibit 14*, which was not before the Advisory Committee or the Minister when the sub judice decision was reached. In this letter the District Officer proceeds to state his views in favour of Applicant in a much stronger tenor and he states that such views are based on a *re-examination* of Applicant's case. This letter of the District Officer, as emanating from the official best in a position to evaluate and state the particular circumstances, constitutes most weighty material and I do not agree at all with the view taken at the time by Mr. Papagavriel that nothing more was brought to light thereby.

One cannot say what decision could have been reached by the Minister of Interior had such letter *exhibit 14* been before him when he endorsed the proposals in *exhibit 13*.

Without holding that, had *exhibit 14* been before him, then

he ought necessarily to have reached a different decision, I do think that *exhibit 14* constitutes a factor which has to be given due weight in reaching a decision on the application of Applicant for exemption. Had the Minister been the competent organ I would have pointed out that *exhibit 14* was a proper ground for considering whether to confirm or rescind his decision already taken on the basis of *exhibit 13*, but as he is not, in my opinion, the proper organ for the purpose, the effect of *exhibit 14* will have to be weighed by the appropriate organ, the Conscription Board for the Larnaca District, when it comes to deal with Applicant's claim for exemption.

Regarding costs I have decided to make no order as to costs, especially as it was Applicant himself who moved the Minister of Interior to decide on his application for exemption.

Decision complained of declared null and void. No order as to costs.