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KYRIACOS  
ANTONI  
CALATTA

v.

REPUBLIC  
(MINISTER  
OF INTERIOR  
AND DEFENCE)

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

KYRIACOS ANTONI CALATTA,

*Applicant,*

*and*

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

*Respondent.*

(Case No. 69/73).

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*Equality—Principle of equal treatment—Article 28.1 of the Constitution—It excludes only the making of differentiations which are arbitrary and totally unjustified—Not contravened by regulating differently matters which are different from each other—Principle applicable only to situations which are of the same nature—See further infra.*

*Military Service—Refusal of the Minister to recognise previous military service of the applicant for the purpose of shortening his period of service in the National Guard—Such refusal does not, in the circumstances of this case, offend against the principle of equality (supra)—Because there is a great difference between the documents submitted by the applicant in support of his application to the Minister and those submitted by three other persons named whose previous service has been recognised—Cf. supra; cf. also infra.*

*Discretionary powers—Principles upon which the Court will interfere with such discretionary powers—Discretion of the respondent Minister conferred upon him by law as to the kind of evidence required to prove allegations in an application for recognition of previous military service (supra)—Properly exercised.*

By this recourse under Article 146 of the Constitution, the applicant is challenging the decision of the respondent not to recognise his previous military service for the purpose of calculating his period of service in the National Guard.

Counsel for the applicant made it quite clear that he based his case on one point of law *i.e.* that in a number of similar cases the respondent Minister recognised the previous military service of the persons named for the purpose of shortening the period of their service in the National Guard; consequently, the decision complained of offends against the principle of equal treatment safeguarded under Article 28.1 of the Constitution, which reads as follows :

“All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.”

The learned Judge of the Supreme Court held that it cannot be said that the applicant was subjected to unequal treatment as there is great difference between the material documents submitted by him and the documents by the aforesaid persons named whose documents were in compliance with relative Order; and applying the well settled principles in the matter that the principle of equality entails the equal or similar treatment of those only who are found to be in the same situation, the learned Judge held that Article 28.1 of the Constitution excludes only differentiations which are arbitrary and totally unjustifiable; and dismissed the recourse accordingly.

Held, (1). Applying the above principles laid down in a number of cases and particularly in the recent decision of the Full Bench of this Court *The Republic v. Arakian and Others* (1972) 3 C.L.R. 294 at p. 299, to the circumstances of this case, it cannot be said that the applicant was subjected to unequal treatment as there is a great difference between the documents submitted by him in support of his application to the Ministry and the documents submitted by the three persons named whose documents were in compliance with the relevant Order.

(2)(a) The respondent, in order to approve applications for recognition of previous military service in cases like the one in hand, required over and above the declarations of the serviceman applying for such recognition the production of two official certificates *i.e.* the one from the Military College in Greece where the said serviceman was

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trained, and the other from the Supreme Military Command of Cyprus Defence (ASDAK) verifying his allegations.

- (b) In doing so the respondent Minister is exercising his discretionary powers conferred upon him by law as to the kind of evidence required to prove the allegations of an applicant serviceman; and the Court will not interfere and substitute its own discretion for that of the administrative organ provided that such organ acts within the powers conferred upon it by law and exercises its discretion in a lawful manner (see *Jacovides v. The Republic* (1966) 3 C.L.R. 212 and Conclusions from the Case Law of the Council of State 1929 - 1959, p. 268). But the applicant, not complying with the said requirements, failed to submit the aforesaid certificates.

*Recourse dismissed.*

Cases referred to :

*The Republic v. Arakian and Others* (1972) 3 C.L.R. 294, at p. 299; Full Bench;

*Jacovides v. The Republic* (1966) 3 C.L.R. 212;

*Decisions of the Greek Council of State* :- Nos. 2080/1950, 1273/1965, 1247/1967.

**Recourse.**

Recourse against the decision of the respondent not to recognise applicant's previous service in the National Guard.

*A. Emilianides with L. HjiDemetris*, for the applicant.

*R. Gavrielides*, for the respondent.

*Cur. adv. vult.*

The following judgment was delivered by :-

MALACHTOS, J.: By this recourse, which is made under Article 146 of the Constitution, the applicant seeks a declaration of the Court that the decision of the respondent communicated to him orally on or about the 24th February, 1973, not to recognise his previous service in the National Guard and/or the omission to approve

the previous service of the applicant or consider his previous service in the National Guard for the purpose of calculating his period of service, is null and void and of no legal effect whatsoever.

The applicant was born on the 30th March, 1945 and under the National Guard Laws 1964 to 1968 he belongs to the 1963 class.

By virtue of a decision of the Council of Ministers the 1963 class in which the applicant belongs, was called for enlistment in the National Guard on the 4th June, 1964.

The applicant is now a graduate of Physics and Mathematics of the Athens University.

By letter dated 11th July, 1964, the applicant informed the Minister of Interior that he was at the time a student of Physics and Mathematics in the Athens University and applied for suspension of his military service and for an exit permit so that he would be able to continue his studies. The Minister approved the application of the applicant and granted him leave of exit from Cyprus dated 21st July, 1964, for the purpose of continuation of his studies. As from 21st July, 1964 to 31st December, 1971 the Minister was granting to the applicant suspension of his service in the National Guard. After completion of his studies the applicant returned to Cyprus and was enlisted in the National Guard on 22nd July, 1972.

By virtue of Decision No. 10503 of the Council of Ministers, dated 27th May, 1971, published in Supplement No. 3 to the Cyprus Gazette of the 11th June, 1971, the applicant being of the 1963 class and a graduate of a University is liable to 12 months' service in the National Guard instead of 24 months' service as in normal cases.

It is the allegation of the applicant that on or about the 25th May, 1964, he was enlisted as a volunteer in the Artillery College of Megalos Pefkos in Greece, where he was studying at the time, and after a few days training he was shipped to Cyprus, together with other students, where he served in the "Trilochia" of Karpasia up to 5th September, 1964. He then left again for Greece in order to continue his studies. The applicant further alleges that

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the period between 25th May, 1964 to 5th September, 1964, should be considered as a previous service in the National Guard so that his present service of 12 months be shortened by such period.

By letter dated 6th February, 1973, the General Headquarters of the National Guard (YEEF) transmitted to the Minister of Interior various documents submitted by the applicant for the purposes of recognition of his alleged previous service.

As regards his service in the Artillery College at Megalos Pefkos, the following documents were submitted :

1. Declarations from various persons with whom he served there.
2. Declaration of himself.
3. His passport indicating his arrival and departure from Cyprus.

As regards his service in "Trilochia" of Karpasia —

- (1) a declaration of Major Chr. Lyroudis; and
- (2) his passport and his own declarations.

It appears that all the above documents did not constitute official documents as the relative Order, and so the decision of the Minister dated 16th February, 1973, was that in view of the fact that the previous service of the applicant is not supported by official documents, it was not possible to recognise it.

The applicant, as a result, filed the present recourse.

When the case came on for hearing before the Court Mr. Emilianides appearing for the applicant made it clear that he based his case entirely on one point of law, namely, Article 28.1 of our Constitution which reads as follows :-

"All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby."

Mr. Emilianides alleged that in similar cases and, in particular, in the case of Nicos Papanicolaou, Petros Loizides and Pieris Despotis, the respondent recognized

their previous service for the purposes of shortening the period of their service in the National Guard.

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In support of his case the applicant gave evidence himself as well as the three above named persons. It transpired from the evidence of all the above three persons that their applications for recognition of their military service were accompanied by —

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- (1) a certificate of the Supreme Military Command of Cyprus Defence (ASDAK) verifying their alleged previous service;
- (2) by a certificate of the relative Military College in Greece where they were trained.

These two certificates in the case of the applicant are missing.

This is clear from a letter addressed to the Ministry of Interior from the General Headquarters of the National Guard (YEEF) dated 23rd April, 1973, which reads as follows :

« Έχομεν τήν τιμήν νά έπαναφέρωμεν τήν υπερθεν σχετικήν και νά γνωρίσωμεν ότι, προκειμένου περι άναγνωρίσεως χρόνου προϋπηρεσίας, τό ΓΕΕΦ ένεργεί βάσει τών προνοιών τών περι Έθνικης Φρουράς Νόμων του 1964 έως 1968, τών Αποφάσεων του Υπουργικού Συμβουλίου, τών Διαταγών του Υπουργού Έσωτερικών και πάντοτε έν συνεννοήσει μετά του Γραφείου Στρατολογίας του καθ' ύμās Υπουργείου :

2. Εϊδικώτερον όσον άφορᾷ τήν άναγνώρισιν προϋπηρεσίας εις τούς :

α. Λοϊζίδην Α. Πέτρον του Λοϊζου ΑΣΜ 5018, κλάσεως 1962 έξ Αϊγιαλούσης.

β. Δεσπότην Πιερην του Γεωργίου ΑΣΜ 5651, κλάσεως 1962 έξ Έπτακώμης.

γ. Παπανικολάου Νικόλαον του Χρίστου ΑΣΜ 5319, κλάσεως 1961 έξ Αϊγιαλούσης, γωρίζομεν ότι :

α. Η προϋπηρεσία τούτων εις έν Έλλάδι Μονάδας και εις ένταϋθα τοιαύτας έγέμετο ως κάτωθι :

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(1) Διά τὰς ἐν Ἑλλάδι Μονάδας, βάσει τῶν παρ' ἡμῖν τηρουμένων ἐπισήμων ὑψηρασιακῶν στοιχείων.

(2) Διά τὰς ἐν Κύπρῳ Μονάδας, βάσει ὑποβληθεισῶν ὑπὸ τῶν ἐνδιαφερομένων πρωτοτύπων βεβαιώσεων τῆς Ἀνωτέρας Στρατιωτικῆς Διοικήσεως Ἀμύνης Κύπρου.

β. Μεταξὺ τῶν ὑπὸ τῶν ὡς ἄνω ὑποβληθέντων δικαιολογητικῶν καὶ τῶν ὑπὸ τοῦ Στρατιώτου Καλαττᾶ Κυριάκου τοῦ Ἀντωνίου ΑΣΜ ὑποβληθέντων τοιούτων, ὑφίσταται οὐσιώδης διαφορὰ ἥτοι, ἐνῶ οἱ οὐς ἀνεγνωρίσθη ἢ προῦπηρεσία φέρονται ἐγγεγραμμένοι εἰς τὰ παρ' ἡμῖν ἐπίσημα στοιχεία καὶ ὑπέβαλον ἡμῖν βεβαίωσιν τῆς ΑΣΔΑΚ, ὁ εἰρημένος στρατιώτης Καλαττᾶς Κυριάκος οὔτε εἰς τὰ παρ' ἡμῖν στοιχεία τὰ ἀφορῶντα τὴν ἐν Ἑλλάδα προῦπηρεσίαν περιλαμβάνεται, οὐδὲ βεβαίωσιν τῆς ΑΣΔΑΚ ἢ ἕτερον ἐπίσημον ἀποδεικτικὸν ἔγγραφον ἠδυνήθη νὰ ἐπισυνάψῃ εἰς τὴν σχετικὴν ἀλληλογραφίαν δι' ὃ καὶ δὲν κατέστη δυνατὴ ἡ ἀναγνώρισις οἰασδῆποτε προῦπηρεσίας του, συμφώνως, ἄλλωστε καὶ πρὸς ὑμετέραν ἀποψιν ἐπὶ τῆς ὑποθέσεως ταύτης».

(“We have the honour to refer to the above matter and to inform you that in the case of recognition of previous service the General Headquarters of the National Guard (YEEF) acts under the provisions of the National Guard Laws 1964 - 1968, the decisions of the Council of Ministers, the Orders of the Minister of Interior and always in consultation with the conscription office of your Ministry:

2. In particular with regard to the recognition of the previous service of:

a. Loizides L. Petros Loizou ASM 5018, 1962 Class, of Yialousa.

b. Despotis Pieris Georghiou ASM 5651, 1962 Class, of Eptakomi.

c. Papanicolaou Nicolaos Christou ASM 5319, 1961 Class, of Yialousa, we would inform you as follows:

a. Their previous service in Units in Greece and here was made out as follows :

1. In respect of the Units in Greece, on the basis of the official service information kept by us.

2. In respect of the Units in Cyprus, on the basis of the original certificates of the Supreme Military Command of Cyprus Defence, which have been submitted by the interested parties.

b. Between the documents submitted by the above persons and those submitted by soldier Calattas Kyriacos Antoniou ASM, there exists a substantive difference, that is, while those whose previous service has been recognised appear in the official documents kept by us and they have submitted a certificate from ASDAK, the said soldier Calattas Kyriacos is not included in our documents referring to previous service in Greece, and he was unable to submit any certificate from ASDAK or any other official certificate, and thus the recognition of his previous service was not rendered possible, in accordance, also, with your own views on this matter.”)

The question of unequal treatment has been dealt with in a series of decisions of this Court, the latest one being *The Republic v. Nishan Arakian and Others* (1972) 3 C.L.R. 294. At page 299 of this report it is stated :-

“Valuable guidance can be derived in this respect from decisions of the Greek Council of State. In addition to the decision in Case 2080/50, which is mentioned in the judgment appealed from, the following decisions may be also referred to :-

In Case 1273/65 it was stated that the principle of equality entails the equal or similar treatment of all those who are found to be in the same situation.

In Case 1247/67 it was held that the principle of equality safeguarded by Article 3 of the Greek Constitution of 1952—which corresponds to Article 28.1 of our Constitution—excludes only the making of differentiations which are arbitrary and totally unjustifiable and exactly the same was held in Case No. 1870/67.

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In Case No. 2063/68 it was held that the principle of equality was not contravened by regulating differently matters which were different from each other.

In Case 1215/69 it was held that the principle of equality is applicable to situations which are of the same nature."

Applying the above principles to the facts and circumstances of this case it cannot be said that the applicant was subjected to unequal treatment as there is a great difference between the documents submitted by him and the documents submitted by the three persons who gave evidence before this Court and whose documents were in compliance with the relative Order. No doubt from the evidence adduced in this case one may be convinced that the applicant really served for the period he alleges in the Artillery College at Megalos Pefkos and the "Trilochia" of Karpasia.

The respondent, however, in order to approve applications for recognition of previous military service in cases like the one in hand, required over and above the declarations of the serviceman applying for such recognition, the production of the two relative official certificates, *i.e.* the one from the Military College in Greece where the said serviceman was trained, and the other from the Supreme Military Command of Cyprus Defence (ASDAK) verifying his allegations that he really served in the National Guard for the alleged period. In doing so the respondent is exercising his discretionary powers conferred upon him by law as to the kind of evidence required to prove the allegations of an applicant.

It is well established in administrative law that the Court will not interfere and substitute its own discretion for that of the administrative organ provided that such organ acts within the powers conferred upon it by law and exercises its discretion in a lawful manner. See *Jacovos Jacovides v. The Republic* (1966) 3 C.L.R. page 212 and *Conclusions of Jurisprudence of the Greek Council of State 1929 to 1959* page 268.

In the present case it cannot be said that the respondent exercised his discretion in an unlawful manner on the

material placed before him. So, it was reasonably open for him to decide in the way he did and reject the application of the applicant.

For the reasons stated above this recourse fails.

In the circumstances I make no order as to costs.

*Application dismissed;*  
*No order as to costs.*

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