1977
Febr. 26
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ALKIS
DIOMEDOU
SOTERIADES
v.
REPUBLIC
(MINISTER
OF INTERIOR)

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALKIS DIOMEDOU SOTERIADES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF INTERIOR,

Respondent.

(*Case No.* 287/76).

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*Administrative Law—Administrative decision—Due reasoning—Need for clarity of reasoning—Decision refusing to exempt applicant from military service—Section 4(3) (c) of the National Guard Law, 1964 (Law 20/64)—Reasoning therefor not clear—Said decision not duly reasoned and, therefore, not in compliance with the relevant principle of Administrative Law requiring due reasoning—Moreover, way in which said reasoning has been framed partly erroneous and partly obscure leads to conclusion that there has been a wrong application of the Law to the facts of this case—*Sub judice *decision annulled due to vague and defective reasoning.*

National Guard—Exemption from military service—Section 4(3) (c) of the National Guard Law, 1964—Whether a person already serving in the National Guard can be exempted therefrom in the exercise of powers under section 4(4) of the Law —In any event matter could be dealt with under s. 9A of the Law.

National Guard Law, 1964 (Law 20/64)—Exemption from Military Service—On the ground that applicant a citizen of the Republic permanently residing outside Cyprus—Section 4(3) (c) of the Law—How to resolve issue whether or not a person liable to military service should be exempted under this section.

National Guard—Voluntary enlistment—Section 12 of the National Guard Law, 1964 (Law 20/64)—Enlistment in the National Guard because of information that failure to do so would en-

tail consequences—Not a case of voluntary enlistment in the sense of the said section 12.

Words and Phrases—"Permanently residing outside" Cyprus—In section 4(3) (c) of the National Guard Law, 1964.

The applicant in this recourse challenged the refusal of the respondent Minister to exempt him from service in the National Guard on the ground that he was a citizen of the Republic who was permanently residing outside Cyprus within the meaning of section 4(3) (c)* of the National Guard Law, 1964 (Law 20/64).

After the Turkish invasion the applicant left Cyprus with his family on October 10, 1974 and went to Greece where his mother, the sole supporter of the family found an employment. He came back to Cyprus on July 10, 1976 and when he was informed that he had to enlist in the National Guard because otherwise proceedings would be taken against him for having failed to do so, he enlisted on July 13, 1976. He then filed a recourse claiming that his enlistment should be set aside and whilst the recourse was pending his counsel wrote to the respondent Minister asking him to discharge the applicant from the National Guard. The Minister referred the matter to the Committee provided for under s. 9A of Law 20/64 which reported that in the present instance "there is no emigration abroad, either in view of the facts or because he has moved to Greece" and added that for these reasons the applicant was not residing permanently abroad, but even if he could be deemed to be so residing he was not entitled to be discharged because he has enlisted voluntarily.

Held, (1) that this is not a case of voluntary enlistment in the sense of section 12 of Law 20/64 as it is quite clear, and not really disputed, that the applicant enlisted because he was informed that he had to do so.

(2) *On the contention of counsel for the respondent to the effect that since the applicant, at the time of the* sub judice *decision, was already serving in the National Guard he could not be exempted therefrom in the exercise of the powers under subsection (4) of section 4 of Law 20/64:*

That the said subsection 4 does not have to be construed

* Quoted at pp. 55-56 *post.*

as restrictively as suggested by counsel for respondent and that its ambit is wide enough to cover a case such as that of the applicant; and that, in any event, the respondent Minister had ample powers to deal with the case of the applicant, if he were satisfied that he was entitled to be discharged from the ranks of the National Guard, by virtue of the provisions of s. 9A* of Law 20/64.

(3) *On the question whether the Committee properly treated applicant as not being permanently residing in Greece because Greece does not accept immigrants for settlement there:*

That the application to the facts of every particular case of the provisions of section 4(3) (c) of Law 20/64 cannot depend on the policy or legislation of any particular country; that whether or not a person liable to military service should be exempted, under the said section 4(3) (c), because he is permanently residing outside Cyprus, is a matter to be resolved here, in Cyprus, in the light of the particular circumstances of each individual case, and by giving to the expression "permanently residing outside Cyprus" its appropriate meaning in accordance with the law of Cyprus, which, in this respect, is more or less the same as the law in England; and that, therefore, useful reference can be made to the case *In re Gape, Decd. Verey and another* v. *Gape and others* [1952] Ch. 743, 749, where it was pointed out that permanently residing in a country is another way of saying that one has in such a country his permanent home.

(4) That the rest of the reasoning contained in the report of the Committee is obscure and does leave any informed reader of it in real and substantial doubt, because it appears therefrom that the applicant was found not to have emigrated abroad in view of the "facts"—which are not specified in the report of the Committee—or because he has gone to Greece, in particular, and not to any other country; that this is, indeed, a case where the principle regarding the need for clarity of reasoning, as expounded in *Constantinides v. The Republic* (1967) 3 C.L.R. 7, applies, with the result that the *sub judice* decision should be found not to be duly reasoned and, therefore, not in compliance with the relevant principle of administrative law requiring due reasoning; that, moreover, the way in which the reasoning of the *sub judice* decision has been

* Quoted at p. 57 *post*.

framed in the present case, partly erroneous and partly obscure, leads to the conclusion that there has been a wrong application of the relevant legislative provisions to the particular facts of this case; and that, accordingly, the *sub judice* decision must be annulled.

Sub judice decision annulled.

Cases referred to:

Constantinides v. The Republic (1967) 3 C.L.R. 7;

In re Gape, Decd. Verey and Another v. Gape and Others [1952] Ch. 743 at p. 749.

Recourse.

Recourse against the refusal of the respondent to exempt applicant from service in the National Guard on the ground that he was a citizen of the Republic who was permanently residing outside Cyprus.

L. N. Clerides, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:-

TRIANTAFYLLIDES, P.: By this recourse the applicant challenges the refusal of the respondent Minister of Interior to exempt him from service in the National Guard on the ground that he is a citizen of the Republic who is permanently residing outside Cyprus.

The *sub judice* decision was communicated to counsel for the applicant by letter dated September 24, 1976 (see *exhibit* 1); it was stated in such letter that the applicant was not permanently residing abroad.

The relevant legislative provision is section 4(3) (c) of the National Guard Law, 1964 (Law 20/64), which reads as follows:-

"(3) There shall be exempted from the liability under subsection (1) -

.....

(c) citizens of the Republic permanently residing outside Cyprus;

.....".

Subsection (1) of section 4 of Law 20/64 makes provision about the liability for service in the National Guard, which, in the said Law, is described as the "Force".

Subsection (4) of section 4 of Law 20/64 was added by means of section 2 of the National Guard (Amendment) (No. 2) Law, 1966 (Law 14/66), and it reads as follows:-

"(4) The Minister decides on every matter arising in connection with the exemption under subsection (3) of persons liable to serve.

For this purpose the Minister sets up an advisory committee consisting of members appointed by him, under the chairmanship of a person with legal education, who is nominated by the Minister, in order to ascertain the true facts of each case and submit to him the outcome of the inquiry conducted by the committee".

The Minister referred to in subsection (4) above, as well as everywhere else in Law 20/64, in relation to the application of such Law, is the respondent Minister of Interior.

It is convenient, at this stage, to deal with the contention of counsel for the respondent to the effect that since the applicant, at the time of the *sub judice* decision, was already serving in the National Guard, he could not be exempted therefrom in the exercise of the powers under subsection (4) of section 4 of Law 20/64. I am of the view that the said subsection (4) does not have to be construed as restrictively as suggested by counsel for respondent, and that its ambit is wide enough to cover a case such as that of the present applicant; in any event, however, the respondent Minister had ample powers to deal with the case of the applicant, if he were satisfied that he was entitled to be discharged from the ranks of the National Guard, because section 9A of Law 20/64, which

was added by means of section 7 of the National Guard (Amendment) Law, 1965 (Law 26/65), reads as follows:-

"9A. The Minister may, if satisfied that a serviceman has enlisted in the Force or serves therein contrary to the provisions of this Law or of the Regulations made thereunder or of decisions issued by the Council of Ministers, order his immediate release".

The facts of the present case are set out in the Application and the Opposition and they have been verified by affidavits filed in the course of the proceedings by the applicant and by his uncle, Procopis Philippou (sworn on November 30 and December 2, 1976, respectively); such facts are, briefly, as follows:

The applicant was born in Famagusta on April 10, 1958; his father died in 1972, and his mother became the sole supporter of the applicant and his elder brother who is now studying at Athens University.

After the Turkish invasion the family had to move, as refugees, from Famagusta to Nicosia, where the mother had found employment, but as she was in danger of loosing her employment she went to Athens on October 10, 1974, where she had found new employment, and she took with her both her sons, one of whom was the applicant; in relation to this trip the Ministry of Interior granted the necessary exit permits.

The applicant became a pupil of secondary education in Athens and he graduated from the Athens Ninth Gymnasium on July 1976.

The applicant had to come back to Cyprus in order to secure a certificate regarding the matter of his liability for service in the National Guard in Cyprus, as such certificate was, apparently, required by the Greek Immigration Authorities; he, also, had to come to Cyprus in order to take part in the entrance examinations held in Cyprus for Cypriots who wanted to study shipbuilding in Greece.

As a result, he came back to Cyprus on July 10, 1976, and he was told by his aforementioned uncle, Philippou, that the Ministry of Interior had informed him that the applicant had to enlist in the National Guard, because

otherwise proceedings would be taken against him for having failed to do so; consequently, the applicant enlisted on July 13, 1976.

The applicant then filed recourse No. 190/76, in this Court, claiming that his enlistment should be set aside as he is not bound to serve in the National Guard in view of the fact that he is permanently residing abroad.

While such recourse was pending counsel for the applicant wrote to the respondent Minister of Interior, on August 25, 1976 (see *exhibit* 4), explaining the position and asking him to discharge the applicant from the ranks of the National Guard.

Apparently, the respondent treated this case as one coming within his powers under section 9A of Law 20/64 and referred the matter to the Committee provided for thereunder.

The report made by the Committee to the Minister is dated August 27, 1976 (see *exhibit* 5); it is stated therein that in the present instance there is no emigration abroad, either in view of the "facts" or because he has moved "to Greece" ("εἴτε ἐπὶ τῇ βάσει τῶν γεγονότων εἴτε λόγῳ τοῦ ὅτι ἡ μετακίνησις εἶναι εἰς Ἑλλάδα"); it is added that for these reasons the applicant is not residing permanently abroad, but even if he could be deemed to be so residing he is not entitled to be discharged because he has enlisted voluntarily.

There is a note on the report of the Committee, which appears to have been made by the Minister, to the effect that he shares the view of the Committee and that the applicant should not be discharged.

It is reasonable and proper, therefore, to treat the said report of the Committee as providing the reasoning for the *sub judice* decision, which was communicated, as aforesaid, to applicant's counsel on September 24, 1976.

In the first place, I do not agree with the view of the Committee that the applicant has enlisted voluntarily; this is not a case of voluntary enlistment, in the sense of section 12 of Law 20/64; and it is quite clear, and not really

disputed, that the applicant enlisted because he was informed that he had to do so.

Secondly, the rest of the reasoning contained in the report of the Committee is obscure and does leave any informed reader of it in real and substantial doubt, because it appears therefrom that the applicant was found not to have emigrated abroad in view of the "facts"—which are not specified in the report of the Committee—or because he has gone to Greece, in particular, and not to any other country; this is, indeed, a case where the principle regarding the need for clarity of reasoning, as expounded in *Constantinides v. The Republic,* (1967) 3 C.L.R. 7, applies, with the result that the *sub judice* decision should be found not to be duly reasoned and, therefore, not in compliance with the relevant principle of administrative law requiring due reasoning. Moreover, the way in which the reasoning of the *sub judice* decision has been framed in the present case, partly erroneous and partly obscure, leads to the conclusion that there has been a wrong application of the relevant legislative provisions to the particular facts of this case.

It has been stated, in the course of argument, by counsel for the respondent, that the Committee treated the applicant as not being permanently residing in Greece, because Greece does not accept immigrants for settlement there. In my view, the application to the facts of every particular case of the provisions of section 4(3) (c) of Law 20/64 cannot depend on the policy or legislation of any particular country; whether or not a person liable to military service should be exempted, under the said section 4(3) (c), because he is permanently residing outside Cyprus, is a matter to be resolved here, in Cyprus, in the light of the particular circumstances of each individual case, and by giving to the expression "permanently residing outside Cyprus" its appropriate meaning in accordance with the law of Cyprus, which, in this respect, is more or less the same as the law in England; therefore, useful reference can be made to the case *In re Gape, Decd. Verey and another v. Gape and others,* [1952] Ch. 743, 749, where it was pointed out that permanently residing in a country is another way of saying that one has in such a country his permanent home.

For all the foregoing reasons, I find that the *sub judice*

decision should be annulled due to vague and defective reasoning; it is now up to the respondent Minister to reconsider the matter and reach a new decision by applying correctly the relevant legislative provisions to the facts of the present case; and, of course, so long as he does so, he is not to consider himself bound, by anything contained in this judgment, to find that the applicant is permanently residing in Greece, because in this judgment all I had to do was to decide whether the reasoning, as given for the *sub judice* decision, was correct and sufficient, and I did not have to decide the issue of where the applicant was residing permanently at the time of his enlistment; that was something I was not entitled to do, because I cannot substitute my own evaluation of the facts in the place of that of the appropriate administrative authority.

This recourse has succeeded, but, in my opinion, it is not a proper case, in view of its rather peculiar circumstances, in which I should award costs against the respondent.

Sub judice decision annulled.
No order as to costs.