

1978 October 7

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS ELIA IOANNOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Case No. 5/78)

National Guard—Military Service—Exemption from—More than three dependants—Section 4(3)(f) of the National Guard Laws—Mother and three unmarried sisters—Applicant their main source of maintenance—Whether partial maintenance of parents, falling short of total maintenance would suffice in order to entitle a conscript to exemption—And whether unwillingness of sisters to work disentitles them from ranking as dependants. 5

Administrative Law—Misconception of law—Application for exemption from military service on the ground of having more than 3 dependants—Mother and three sisters—Section 4(3)(f) of the National Guard Laws—Application rejected because mother was only partly maintained by applicant and because sisters, though mainly maintained by him, were unwilling to work—Partial maintenance of parents would possibly suffice to entitle conscript to exemption—And unwillingness of sisters to work immaterial for the purpose of the said s. 4(3)(f)—Finding that applicant had not more than 3 dependants due to a misconception of law—Sub judice refusal annulled. 10 15

When the applicant was called up for conscription in the ranks of the National Guard he applied for exemption, under the provisions of s. 4(3)(f)* of the National Guard Laws on the 20

* Quoted at p. 279 *post*.

ground that he had more than three dependants, namely his mother and his three unmarried sisters.

5 The applicant was earning £50.- per month and was contributing £35.- per month towards the maintenance and support of his mother and his aforesaid three sisters. They were all residing in a flat at a monthly rent of £24.- but half of the rent was paid by the family of their married sister.

10 The respondent Minister, acting on the advice of the Advisory Committee, set up under section 4(4) of the National Guard Law 1964 (Law 20 of 1964 as amended by Law 13 of 1966), rejected his application on the ground that his mother and his three unmarried sisters were not his dependants because his sisters were willingly staying out of work and the mother was a self-supported person by receiving a monthly pension of £16.250 mils.

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Hence the present recourse.

20 Counsel for the respondents conceded that it was immaterial for the purposes of the said section 4(3)(f) that the three sisters were willingly staying out of work and agreed that on the established facts they should have been considered as dependants.

25 *Held, annulling the sub judice decision*, (1) that the mother cannot possibly live on a monthly pension of £16.250 mils when she has to pay only for rent of the flat in which she lives £12.- per month; that she is, therefore, partly maintained by the applicant who is the main source of maintenance of the family; that partial maintenance of parents, brothers or sisters, falling short of total maintenance, would possibly suffice in order to entitle the conscript to exemption from military service (see *Antonίου v. Republic* (1967) 3 C.L.R. 259 at p. 263).

30 (2) That the applicant is in fact the only source of maintenance of his three unmarried sisters and the fact that they are willingly staying out of work and they are not interested to find a job is immaterial.

35 (3) That on the facts found by the Advisory Committee as true and correct, it could not possibly find that the applicant had not more than three dependants; that this finding was due to a misconception of law, and, consequently the advice to the Minister on which he acted and issued the decision complained

of was a wrong one; and that, accordingly, the *sub judice* decision is declared *null* and *void*.

Sub judice decision annulled.

Cases referred to:

Antoniou v. The Republic (1967) 3 C.L.R. 259 at p. 263. 5

Recourse.

Recourse against the refusal of the respondent to exempt applicant from the obligation to serve in the National Guard.

T. P. Constantinides, for the applicant.

R. Gavrielides, Counsel of the Republic, for the respondent. 10

Cur. adv. vult.

MALACHTOS J. read the following judgment. The applicant in this recourse claims a declaration of the Court that the act and/or decision of the respondent communicated to the applicant by letter dated 26/10/77, by which he was not exempted from the obligation to serve in the National Guard as having not more than three dependants, is *null* and *void* and of no legal effect whatsoever. 15

The relevant facts are the following:

The applicant was born at Voukolidha village Famagusta District on 27/7/56 and his class was called up for conscription in the ranks of the National Guard by virtue of decision No. 12833 of the Council of Ministers dated 15/11/73. 20

By the relevant order of the Minister of Interior and Defence published in Supplement No. 3 to the Official Gazette of the Republic of the 7th December, 1973, the date of enlistment of the class of the applicant was fixed for the 21st January, 1974. On the 23rd July, 1974, the applicant was exempted from enlistment for health reasons up to 23/10/75 and this exemption was renewed up to January, 1976. On 3/1/76 the applicant applied to the respondent Minister for exemption from service in the National Guard by virtue of section 4(3)(f) of the National Guard Laws on the ground that he had more than three dependants i.e. his mother, who was a widow and three of his sisters who were not married. This section is as follows: 25 30 35

“4(1) Subject to the provisions of subsection 3, all citizens

of the Republic shall, from the 1st day of January of the year in which they complete the 18th year of their age and until 1st January of the year in which they complete the 50th year of their age, be subject to the provisions of this Law and liable to serve in the Force.

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(2)

(3) There shall be exempted from the liability under sub-section (1) -

.....

(f) All persons having on the date on which they were called up for service more than three dependants:

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Provided that any serviceman serving in the force who during his service acquires more than three dependants shall be exempted from further service.

For the purpose of this sub-section, the expression 'dependants' means -

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(i) children under eighteen years old;

(ii) spouse;

(iii) illegitimate children, children over eighteen years old, parents, brothers and sisters, who are maintained by the serviceman."

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This application of the applicant was rejected on the ground that he had not more than three dependants, as his mother was receiving a widow's pension then amounting to £13.- per month and his three sisters were of age and could maintain and support themselves.

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The relevant decision was communicated to the applicant by letter dated 11th January, 1976. Against this decision the applicant filed Recourse No. 95/76, which he later withdrew.

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On 14/6/77 the applicant, through his advocate, applied again to the Minister for exemption from service under section 4(3)(f) of the Law, putting forward new facts which came into existence after his previous application.

The case of the applicant was referred to the Advisory Committee which is set up by virtue of section 4(4) of the National Guard Law, 1964 (Law No. 20/1964, as amended by Law

13/1966) which, on 17/10/1977, submitted its report, *Exhibit 1*, to the Minister after obtaining a social investigation report, *Exhibit 3*, from the Welfare Office of Larnaca.

The report of the Advisory Committee to the Minister is as follows:-

“The Committee having examined today the present case, finds that the facts are as set out in the report of the welfare officer of Larnaca dated 27/9/1977, and that on the basis of these facts a refusal of exemption may be based as there are not more than three dependants.”

The facts set out in the report of the Welfare Officer of Larnaca are the following:

“1. *Composition of the Family:*

- (i) The applicant Georghios Elia Ioannou, aged 21;
- (ii) The mother of the applicant Chrystallou Elia Ioannou, widow, aged 56, housewife;
- (iii) His four sisters, namely, Eleni aged 34, Demetra aged 32, Yiannoulla aged 30, who are not married and Katerina aged 26 who is married to a labourer and has one minor child.
- (iv) The brother of the applicant Demetris Elia Ioannou, aged 28, whose family consists of his wife and his two minor children.

2. *Financial Position:*

The applicant and his family are refugees from Voukolidha village and they have no property whatsoever in the free areas controlled by the Government. In the Turkish occupied areas they have two old houses and 15 donums of cultivable land at Voukolidha and a modern house in Famagusta town which they purchased from a certain Kyriakos Psaras and to whom they are still indebted in the sum of £500.- The salary of the applicant is £50.- per month and the widow's pension of his mother £16.250 mils per month.

3. *Living Conditions:*

The applicant resides in a flat at 43 Chrysopolitissa

Street, Larnaca, with his mother, his three unmarried sisters, and the family of his married sister. The rent of this flat is £24.- per month. The brother of the applicant with his family resides in a flat next door.

5 4. *Historical Background:*

The applicant, who is a graduate of a Gymnasium lost his father when he was 5 years old. His mother was working occasionally as a labourer to bring up her children assisted by her mother, who was a seamstress. His brother, 10 Demetris, who is married and has got two children served in the National Guard for one year only and was exempted from service on the ground that he had more than three dependants. His sister Eleni, who is a seamstress and Demetra who is a labourer are out of work. His sister 15 Yiannoulla who is also a seamstress works occasionally at daily wages from house to house. The applicant is employed in a shop where they sell electrical appliances and receives a salary of £50.- per month.

5. *Remarks:*

20 The three unmarried sisters of the applicant are willingly staying out of work. They could work but they are not interested to find a job."

In addition to the above, the following facts were admittedly before the respondent at the time of the examination of the 25 case:

1. That half of the rent for the flat was paid by the family of the married sister.
2. That the applicant was contributing £35.- per month towards the maintenance and support of his mother and his three unmarried sisters, and 30
3. That the brother of the applicant could not help the family financially as his salary was only £58.- per month.

The Minister upon receiving the report of the Advisory Committee, *exhibit 1*, wrote on it the word "rejected" and 35 then the following letter, *Exhibit 2*, dated 26th October, 1977, from the Ministry of Interior and Defence containing the negative decision complained of was addressed to the applicant.

“I have been instructed to refer to your letter dated 14/6/77 by which you applied for exemption from liability to serve in the National Guard due to dependant persons and to inform you that by virtue of the provisions of the National Guard Law you cannot be exempted from such service as from the examination of the facts of the case it has been established that you have not more than three dependant persons”.

As a result the applicant on 5/1/78 filed the present recourse and the grounds of law on which the recourse is based, as stated therein, are the following:

1. That the decision complained of was taken contrary to the provisions of section 4 of the National Guard Laws.
2. That the said decision was taken without proper enquiry or under circumstances amounting to misconception of facts, and
3. That the decision is not duly reasoned.

Counsel for applicant submitted that there is a misconception of the provisions of section 4(3)(f) of the Law on the part of the respondent authority in applying it to the facts of the case in deciding that the mother and the three unmarried sisters of the applicant are not his dependants. The term “dependants” as defined in section 4(3)(f)(iii) of the Law comprises among other classes of persons, parents and sisters who are maintained and supported by the conscript. It is immaterial for the purpose of the Law whether the three unmarried sisters of the applicant are willingly staying out of work or not. So long as the applicant contributes to their maintenance and support being the main bread winner of the family, as he put it, the three sisters should have been considered as his dependants.

As regards the mother, counsel for applicant argued that she cannot be considered as a self supported person by receiving a widow’s pension of £16.250 mils per month out of which she has to pay £12.- for rent.

Counsel for the respondent in arguing his case conceded the point raised as regards the sisters of the applicant and agreed that on the established facts they should have been considered as dependants. However, as regards the mother, he submitted

that she was rightly considered as a self supported person since she is receiving a widow's pension and so the Advisory Committee rightly advised the Minister that the application for exemption from service could be refused as the applicant had
5 not more than three dependants.

In the way this recourse was presented and argued before me by both counsel the only point that falls for consideration is whether on the established facts the mother of the applicant can be considered as his dependant. I must say straight away
10 that the mother of the applicant cannot possibly live on a widow's monthly pension of £16.250 mls when she has to pay only for rent of the flat in which she lives £12 per month. So, she is partly maintained by the applicant who, as it appears from the social investigation report, is the main source of
15 maintenance of the family. Partial maintenance of parents, brothers or sisters falling short of total maintenance, would possibly suffice in order to entitle the conscript to exemption from military service. This view finds support in the case of
20 *Antonios Christou Antoniou v. The Republic* (1967) 3 C.L.R. 259 at page 263 decided by the Full Bench of this Court. As regards his three unmarried sisters the applicant is in fact the only source of their maintenance.

For the purpose of section 4(3)(f) of the National Guard Laws the remarks of the welfare officer contained in the report,
25 *exhibit 3*, which must have influenced the Advisory Committee in preparing their report to the Minister, that the three unmarried sisters of the applicant are willingly staying out of work and they are not interested to find a job, are immaterial. In my view counsel for the respondent very rightly conceded
30 this point in favour of the applicant.

Therefore, the Advisory Committee on the facts found by it as true and correct, could not possibly find that the applicant had not more than three dependants. This finding was due to a misconception of the Law and, consequently, the advice
35 to the Minister on which he acted and issued the decision complained of was a wrong one.

For the above reasons this recourse succeeds and the decision of the respondent by which the applicant was not exempted from the obligation to serve in the National Guard is declared
40 *null and void*.

On the question of costs, the respondent is adjudged to pay £ 20.- against the costs of the applicant.

*Sub judice decision annulled.
Order for costs as above.*