

1979 February 14

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. CHRISTOS ARTEMIDES,
2. PETROS ARTEMIS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF INTERIOR AND DEFENCE,

Respondents.

(Cases Nos. 65/79, 67/79).

Provisional Order—Rule 13 of the Supreme Constitutional Court Rules—District Judges—Recourses against decision calling them up for part time military service as reservists—Application for provisional orders suspending effect of said decision pending outcome of recourses—Validity of sub judice decision challenged as contravening principles of the Separation of Powers and of the Independence of the Judicial Power—Peaceful conditions reigning at present in the Country and its defence will not suffer any irreparable, or even grave, harm if the provisional orders sought for are granted—On the contrary said principles will be violated in an irreparable manner if the orders are refused and it turns out later that the applicants are justified in making their recourses—Applications granted.

The applicants, who are District Judges, have been called up for part time military service, as reservists, in the National Guard under section 30 of the National Guard Laws, 1964 to 1978. After filing recourses against the administrative decisions and acts calling them to serve as above, they have also applied for provisional orders by means of which they sought to have suspended the said decisions and acts, pending the outcome of their recourses.

Applicants contended that the *sub judice* decisions and acts

contravene the fundamental principles of the Separation of Powers and of the Independence of the Judicial Power, both of which form integral parts of our constitutional structure.

Counsel for the respondents agreed that there were, indeed, serious constitutional issues to be determined; and has stated that it was up to the Court to decide as regards the balance of detriment to be caused, respectively, to the public interest and to the applicants depending on whether the provisional orders applied for by them were granted or refused. 5

Held, that there are reigning, at present, peaceful conditions in our country, even though a considerable part of it is, unfortunately, still under foreign military occupation, and, therefore, its defence, and the public interest generally, will not suffer any irreparable, or even grave, harm if the provisional orders sought for are granted, whereas, on the contrary, if they are refused and it turns out later that the applicants are justified in making their present recourses—and this is a matter in relation to which this Court is not pronouncing now—then there will have been violated in an irreparable manner the aforementioned basic constitutional principles; and that, accordingly, the provisional orders applied for will be hereby made. 10 15 20

Applications granted.

Cases referred to:

Yerasimou v. Republic (1978) 3 C.L.R. 36.

Applications for provisional orders. 25

Applications for provisional orders, under rule 13 of the Supreme Constitutional Court Rules, suspending the effect of the *sub judice* decisions of the respondents to call up the applicants for part time military service, as reservists, in the National Guard. 30

M. Christofides, for the applicants.

N. Charalambous, Counsel of the Republic, for the respondents.

TRIANTAFYLLIDES P. gave the following decision. In these two recourses applicant 1 (who is the applicant in case No. 65/79) and applicant 2 (who is the applicant in case No. 67/79) have applied for provisional orders, under rule 13 of the Supreme 35

Constitutional Court Rules, which are now applicable in the course of the exercise by this Court of its jurisdiction under Article 146 of the Constitution.

5 By means of the orders applied for they seek to have suspended, pending the outcome of their recourses, which are practically identical, the administrative decisions and acts by virtue of which they have been called up for part time military service, as reservists, in the National Guard under section 30 of the National Guard Laws, 1964 to 1978.

10 The applicants are District Judges; applicant 1 is posted at the District Court of Nicosia and applicant 2 is posted at the District Court of Limassol.

Both of them have duly completed, before their appointment as District Judges, their normal period of military service and, as they state expressly in their affidavits, which have been filed in support of their applications for provisional orders, they are not motivated by any intention to evade the fulfilment on their part of any lawful obligation of theirs towards their country, but they honestly believe that their true mission is to serve their country by performing to the full their duties as Judges and that the administrative decisions and acts complained of by them will interfere with the smooth administration of justice.

In the Applications in their recourses they base their challenge of the validity of the *sub judi e* decisions and acts on, *inter alia*, the fundamental principles of the Separation of Powers and of the independence of the Judicial Power, both of which form integral parts of our constitutional structure, and they contend that the said decisions and acts contravene such principles. Counsel for the respondents does agree that there are, indeed, serious constitutional issues to be determined in these proceedings; and he has stated that it is up to the Court to decide as regards the balance of detriment to be caused, respectively, to the public interest and to the applicants depending on whether the provisional orders applied for by them are granted or refused.

35 I have weighed carefully all relevant considerations in the light of the principles applicable in relation to the making of provisional orders under rule 13, above (see. *inter alia*, *Yerasimou v. The Republic*, (1978) 3 C.L.R. 36, and the case-law referred to therein). Each case, of course, depends on its own

circumstances; and in the present instance what has weighed
mainly with me is that there are reigning, at present, peaceful
conditions in our country, even though a considerable part of
it is, unfortunately, still under foreign military occupation, and,
therefore, its defence, and the public interest generally, will not
suffer any irreparable, or even grave, harm if the provisional
orders sought for are granted, whereas, on the contrary, if I
refuse them and it turns out later that the applicants are justifi-
fied in making their present recourses—and this is a matter in
relation to which I am not pronouncing now—then there will
have been violated in an irreparable manner the aforementioned
basic constitutional principles. 5 10

It is hereby, therefore, ordered under the said rule 13, that
the effect of the decisions and acts which are the subject matter
of these two recourses shall be suspended, in so far as these two
applicants are concerned, till the final outcome of the recourses.
Of course, if there supervenes, in the meantime, any change of
relevant circumstances which would justify a revision of the
provisional orders which have just been made, with a view to
rescinding them or modifying them, the respondents are at
liberty to apply accordingly to this Court even before the final
determination of these cases. 15 20

Applications granted.