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[TRIANTAFYLIDIS, P., HADJIANASTASSIOU, A. LOIZOU,
MALACHTOS, DEMETRIADES, JJ.]

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

v.

SYMEON DROUSHIOTIS AND OTHERS,
Respondents.

(*Revisional Jurisdiction Appeals Nos. 238, 239.*)

National Guard (Amendment) Law, 1978 (Law 22/78)—Section 2(b) not intended to make provision about citizenship of the Republic but, merely, is a law extending the notion of “citizen of the Republic” under section 4(1) of the National Guard Law, 1964 (Law 20/64)—Not unconstitutional as being contrary to Article 198 of the Constitution and to Annex “D” to the Treaty of Establishment of the Republic of Cyprus.

Constitutional law—Constitutionality of Legislation—Section 2(b) of the National Guard (Amendment) Law, 1978 (Law 22/78) not contrary to Article 198 of the Constitution and Annex “D” to the Treaty of Establishment.

By virtue of section 4(1) of the National Guard Law, 1964 (Law 20/64) it is provided that all citizens of the Republic are, subject to the provisions of such Law, liable to serve in the National Guard. Section 2(b)* of the National Guard (Amendment) Law, 1978 (Law 22/78) inserted a definition of “citizen of the Republic” in section 2 of Law 20/64 and the appellant acting in pursuance of this definition called up the respondents for military service in the National Guard. The respondents, who were all born abroad and were foreign nationals and not citizens of Cyprus but their fathers have been born in Cyprus, challenged the validity of their call up by means of a recourse. The trial Judge held that they were not obliged to do military

* Section 2(b) is quoted at pp. 625–627 *post*.

service because the said section 2(b) was unconstitutional as contravening the provisions of Article 198* of the Constitution and of Annex D to the Treaty of Establishment of the Republic of Cyprus of 1960.

Upon appeal by the Minister of Interior: 5

Held, (Malachos J. dissenting) that when section 2(b) of Law 22/78 is construed in accordance with its true meaning and effect it should not be regarded as a Law intended to make provision about citizenship of the Republic but, merely, as a Law extending the notion of "citizen of the Republic", which is found in section 4(1) of Law 20/64, only for the purposes of such Law; that, in other words, those foreign nationals, such as the present respondents, who are descended in the male line from persons born in Cyprus are not rendered, ipso facto, by means of section 2(b) of Law 22/78, citizens of the Republic, but are only burdened with the obligation to serve in the National Guard in the same manner as citizens of the Republic; and that, therefore, it is only for the purposes of the National Guard legislation that they are treated as being citizens of the Republic and this is done in a descriptive manner not affecting their citizenship status at all; accordingly the said section 2(b) is not invalid and that, consequently, the respondents, by virtue of its provisions, are liable to serve in the National Guard, being treated as citizens of the Republic for the purposes of the National Guard legislation only, even though they are not, from the point of view of their citizenship status, citizens of the Republic and even though they do not acquire the status of citizenship of the Republic by virtue of the provisions of section 2(b) of Law 22/78. 10 15 20 25

Appeals allowed. 30

Cases referred to:

Pieri v. The Republic (1979) 3 C.L.R. 91.

Appeals.

Appeals against the judgments of a Judge of the Supreme Court of Cyprus (Savvides, J.) given on the 14th October, 1980 and the 7th November, 1980 (Revisional Jurisdiction Case Nos. 123/80 and 223/80-225/80) whereby it was held that the 35

* Article 198 is quoted at p. 627 *post*.

respondents, who were born abroad and are foreign nationals and not citizens of the Republic of Cyprus, but whose fathers have been born in Cyprus, are not obliged to do military service in the National Guard.

5 K. Michaelides, for the appellant.

 X. Xenopoulos, for the respondent in Revisional Appeal No. 238.

 A. Poetis, for the respondents in Revisional Appeal No. 239.

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Cur. adv. vult.

The judgment of the majority of the Court was delivered by:

15 TRIANTAFYLIDIS P.: These two appeals which, in view of their nature were heard together, have been made against first instance judgments* of a Judge of this Court by means of which it was held, in effect, that the respondents, who were all born abroad and are foreign nationals and not citizens of Cyprus, but whose fathers have been born in Cyprus, are not obliged to do military service in the National Guard, under sections 2 and 4 of the National Guard Law, 1964 (Law 20/64), as amended, in particular, by section 2 of the National Guard (Amendment) Law, 1978 (Law 22/78).

25 In the opinion of the learned trial Judge, who, in this respect, followed the case of *Pieri v. The Republic*, (1979) 3 C.L.R. 91, which was decided by another Judge of this Court in the first instance, and in relation to which no appeal has been made, section 2(b) of Law 22/78 contravenes the provisions of Article 198 of the Constitution and of Annex D to the Treaty of Establishment of the Republic of Cyprus of 1960.

30 By virtue of section 4(1) of Law 20/64 it is provided that all citizens of the Republic are, subject to the provisions of such Law, liable to serve in the National Guard.

Section 2(b) of Law 22/78, which has inserted a definition of "citizen of the Republic" in section 2 of Law 20/64, reads as follows:-

35 "2. Το άρθρον 2 του βασικοῦ νόμου τροποποιεῖται ὡς ἀκολούθως:-

(α) -----

* Reported in (1980) 3 C.L.R. 563 and 585.

- (β) διὰ τῆς ἐν αὐτῷ ἐνθέσεως, εἰς τὴν δέουσαν ἀλφαβητικὴν αὐτοῦ σειρὰν, τοῦ ἀκολουθοῦντος νέου ὀρισμοῦ:—
- ‘πολίτης τῆς Δημοκρατίας’ σημαίνει πολίτην τῆς Δημοκρατίας καὶ περιλαμβάνει πρόσωπον Κυπριακῆς καταγωγῆς ἐξ ἄρρενογονίας, ἦτοι— 5
- (α) πρόσωπον, τὸ ὁποῖον κατέστη Βρετανὸς ὑπήκοος δυνάμει τῶν περὶ Προσαρτήσεως τῆς Κύπρου Διαταγμάτων ἐν Συμβουλίῳ τοῦ 1914 ἕως 1943· ἢ
- (β) πρόσωπον, τὸ ὁποῖον ἐγεννήθη ἐν Κύπρῳ κατὰ ἢ μετὰ τὴν 5ην Νοεμβρίου, 1914, καθ’ ὃν χρόνον οἱ γονεῖς αὐτοῦ διέμενον συνήθως ἐν Κύπρῳ· ἢ 10
- (γ) ἐξώγαμον ἢ νόθον τέκνον τοῦ ὁποῖου ἡ μήτηρ κατεῖχε κατὰ τὸν χρόνον τῆς γεννήσεως αὐτοῦ τὰ προσόντα τὰ ἀναφερόμενα ἐν τῇ ἄνω παραγράφῳ (α) ἢ (β) τοῦ παρόντος ὀρισμοῦ· ἢ 15
- (δ) πρόσωπον καταγόμενον ἐξ ἄρρενογονίας ἐκ προσώπου οἷον ἀναφέρεται ἐν τῇ ἄνω παραγράφῳ (α) ἢ (β) ἢ (γ) τοῦ παρόντος ὀρισμοῦ”.
- (“Section 2 of the principal law is hereby amended as follows:— 20
- (a)
- (b) By the insertion therein, in its proper alphabetical order, of the following new definition:—
- ‘Citizen of the Republic’ means citizen of the Republic and includes a person of Cypriot origin descended 25
in the male line, that is—
- (a) a person who has become a British subject under the provisions of the Cyprus (Annexation) Orders in Council 1914 to 1943; or
- (b) a person who was born in Cyprus on or after 30
the 5th of November, 1914, at a time when his parents were ordinarily residing in Cyprus; or
- (c) an illegitimate child whose mother, at the time of his birth, possessed the qualifications referred to in paragraph (a) or (b), above, of this definition; 35
or
- (d) a person descended in the male line from a person

referred to in paragraph (a) or (b), or (c), above, of this definition”).

Article 198 of the Constitution reads as follows:—

5 “1. The following provisions shall have effect until a law of citizenship is made incorporating such provisions—

(a) any matter relating to citizenship shall be governed by the provisions of Annex D to the Treaty of Establishment;

10 (b) any person born in Cyprus, on or after the date of the coming into operation of this Constitution, shall become on the date of his birth a citizen of the Republic if on that date his father has become a citizen of the Republic or would but for his death have become such a citizen under the provisions of Annex D to the Treaty of Establishment.

15 2. For the purposes of this Article ‘Treaty of Establishment’ means the Treaty concerning the Establishment of the Republic of Cyprus between the Republic, the Kingdom of Greece, the Republic of Turkey and the United Kingdom of Great Britain and Northern Ireland”.

When there was enacted the Republic of Cyprus Citizenship Law, 1967 (Law 43/67), the provisions of the aforementioned Annex D to the Treaty of Establishment were incorporated by reference in section 3 of the said Law.

25 It could, perhaps, be said, at first sight, that section 2(b) of Law 22/78 purports to make provision about citizenship of the Republic, without being the law of citizenship envisaged under Article 198 of the Constitution, and, also, that it purports to provide about citizenship of the Republic in a manner which is not within the ambit of Annex D to the Treaty of Establishment.

35 It is, apparently, due to such an approach that, both in the *Pieri* case, *supra*, and in the cases now before us, learned Judges of this Court took the view that section 2(b) of Law 22/78 is invalid.

We have eventually been persuaded, however, by counsel for the appellant that when section 2(b) of Law 22/78 is construed

in accordance with its true meaning and effect it should not be regarded as a Law intended to make provision about citizenship of the Republic but, merely, as a Law extending the notion of "citizen of the Republic", which is found in section 4(1) of Law 20/64, only for the purposes of such Law; in other words, those foreign nationals, such as the present respondents, who are descended in the male line from persons born in Cyprus are not rendered, ipso facto, by means of section 2(b) of Law 22/78, citizens of the Republic, but are only burdened with the obligation to serve in the National Guard in the same manner as citizens of the Republic; therefore, it is only for the purposes of the National Guard legislation that they are treated as being citizens of the Republic and this is done in a descriptive manner not affecting their citizenship status at all.

Even assuming, therefore, that we were to hold that, in view of Article 198 of the Constitution, only a Law of citizenship can make provision about the status as such of a citizen of the Republic, and that any other Law purporting to do so would be unconstitutional as being contrary to Article 198, above, we are of the view that section 2(b) of Law 22/78 is not contrary to Article 198, because it is not at all a legislative provision related to the status of Cyprus citizens; it is only a legislative drafting device which has been resorted to in order to bring within the ambit of the description of Cyprus citizens, for the purposes only of Law 20/64, certain persons who are not, from the point of view of national status, citizens of the Republic, even though they are descended in the male line from Cypriots.

In any case, in our view, Article 198 does not go so far as to exclude the making of provision about Cyprus citizenship by a Law which is not the Law of citizenship envisaged by such Article. All that Article 198 provides is that certain provisions, which are referred to therein, including the provision of Annex D to the Treaty of Establishment, shall have effect until a Law of citizenship is made incorporating such provisions, and since this has been done by means of Law 43/67, there is nothing to prevent the Legislature from making further provisions about citizenship by means of any other Law or for the particular purposes of any other Law.

In the course of the hearing of the present appeals reference

has been made, too, to Article 32 of the Constitution which reads as follows:-

5 “Nothing in this Part contained shall preclude the Republic from regulating by law any matter relating to aliens in accordance with International Law”.

10 We do not think that Article 32 is at all relevant to the fate of these appeals, because it is to be found in Part II of the Constitution, in relation to Fundamental Rights and Liberties, and it is only intended to safeguard the right of the Republic to regulate by Law, in accordance with International Law, any matter relating to aliens in so far as Fundamental Rights and Liberties are concerned.

15 It is to be noted, further, that paragraph 2 of Article 10, in Part II, also, of our Constitution, provides that “No person shall be required to perform forced or compulsory labour” and paragraph 3 of that Article provides that for the purposes of this Article the term ‘forced or compulsory labour’ shall not include any service of a military character; therefore, it can be said that there exists clear provision in Article 10 by virtue of which it is laid down that it is not unconstitutional to require, not only citizens of the Republic, but, also, by necessary implication, any other “person” who comes within the ambit of the competence of the appropriate organs of the Republic, to do service of a military character, as has been done in the present instance in relation to the respondents to these appeals.

25 For all the foregoing reasons, we are of the view that the said section 2(b) is not invalid and that, consequently, the respondents, by virtue of its provisions, are liable to serve in the National Guard, being treated as citizens of the Republic for the purposes of the National Guard legislation only, even though they are not, from the point of view of their citizenship status, citizens of the Republic and even though they do not acquire the status of citizenship of the Republic by virtue of the provisions of section 2(b) of Law 22/78.

35 For all the foregoing reasons these appeals should be allowed and the recourses of the respondents against the decisions of the appellant Minister requiring them to do service in the National Guard have to be dismissed accordingly.

MALACHTOS J.: The respondents in these two appeals were called up for service in the National Guard although they are not citizens of the Republic under Annex 'D' to the Treaty of Establishment of the Republic of Cyprus Citizenship Law, 1967 (Law 43/67). This was made possible as a result of the enactment of section 2(b) of the National Guard (Amendment) Law, 1978 (Law 22/78) which made citizens of the Republic for conscription purposes all persons who are of Cypriot origin from their fathers' side. Under section 4 of the National Guard Laws only citizens of the Republic are liable to military service.

The only question that falls for consideration in the present appeals is the constitutionality of the amending section 2 of Law 22/78.

I have had the opportunity to deal with this question in the case of *Pieri v. The Republic*, (1979) 3 C.L.R. 91, where I decided that this amending section is unconstitutional as offending Article 198 of the Constitution. The nationality of a person cannot be changed for the purpose of serving in the armed forces of a foreign state as in the present case. This view was followed by the trial Judge and I must say that I have not been persuaded by counsel for the appellant authority that he was wrong in reaching the conclusion he did.

I would, therefore, dismiss the appeals.

TRIANAFYLLIDES P.: In the result these appeals are allowed by majority and the recourses of the applicants are dismissed.

In the circumstances of these cases we have decided to make no order as to the costs of these appeals or of the recourses concerned.

Appeal allowed. No order as to costs.