IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

SOFOCLES SOFOCLEOUS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF EDUCATION,

Respondent.

(*Case No.* 327/71).

Recourse under Article 146 *of the Constitution—Provisional order suspending effect of the administrative decision subject-matter of said recourse—Principles upon which such provisional orders may be granted—Merits of the recourse—Flagrant illegality of the decision challenged—Irreparable injury or damage to the applicant if provisional order is refused—The consideration (a most material one) of serious obstacles which may be caused to the functioning of the administration as a result of the issue of a provisional order—Provisional order refused in the instant case.*

Provisional Order suspending effect of executory administrative act or decision, subject-matter of the recourse—Rule 13 *of the Supreme Constitutional Court Rules,* 1962*—Principles applicable—See* supra ; *see also* infra.

Provisional Order—Flagrant illegality—A ground for granting a provisional order even if no irreparable damage has been proved and even when serious obstacles would be caused to the Administration—However, it is a ground to be approached with the utmost caution, as it may be tantamount to disposing the case on its merits—Rule 13 (supra)*—A stay is always a matter of discretion, and not a matter of right—It is an exercise of judicial discretion—See also* supra *and* infra.

Provisional Order—Provisional order on the ground of " irreparable damage " to the applicant—Damage alleged to result from the administrative decision concerned must be specified in the application in a concrete way—Vague statements will not do—Moreover, even if irreparable damage is proved, a stay is not a matter of right—It is an exercise of judicial discretion.—See further supra.

Education Service—Secondary Education—Director Grade "A"—Transfer—Recourse against transfer—Provisional Order staying transfer until final determination of the recourse—Refused—No flagrant illegality—No proof of irreparable damage to the applicant as by law required—See further ante.

This is a recourse under Article 146 of the Constitution whereby the Applicant, a Director Grade "A" in the Education Service—Headmaster of Neapolis Gymnasium for the last two years—, challenges the validity of his transfer and/or posting from the said Gymnasium to the Evening Gymnasium Nicosia. This recourse was filed on August 25, 1971, together with an application for a provisional order staying applicant's transfer until the final determination of the aforesaid recourse. In support of his application for a provisional order under Rule 13 of the Supreme Constitutional Court Rules, 1962, the applicant relied mainly on the ground that his transfer was so flagrantly illegal that a stay should be ordered to prevent the illegality being implemented, the applicant alleging, further, that he would suffer irreparable damage if the transfer was not postponed by a provisional order.

Refusing the provisional order applied for, the Court :—

Held, (1). In my opinion it is correct to say that the merits of a recourse for annulment of an administrative act are factors to be taken into consideration in deciding whether or not a provisional order for a stay will be granted.

(2) (*a*) The flagrant illegality of an administrative act is a ground for granting a provisional order even if no irreparable damage has been proved and even when serious obstacles will be caused to the administration. It may be said with certainty that when an administrative act is flagrantly illegal a provisional order may be granted.

(*b*) It is, however, a ground to be approached with the utmost caution, as it may be tantamount to disposing the case on its merits, something discouraged by Rule 13 of the Supreme Constitutional Court Rules, 1962, though this rule cannot be held as diverting this Court from being the watch-dog of legality.

(3) The grounds upon which this recourse is based are not such as to justify me in saying outright, on the material adduced for the purposes of the provisional order only, that the transfer of the applicant is so manifestly illegal that this reason should

outweigh the secondary factor of irreparable damage. (Cf. *Cleanthis Georghiades* (No. 1) v. *The Republic* (1965) 3 C.L.R. 392, at p. 395 ; *Iordanou* (No. 2) v. *The Republic* (1966) 3 C.L.R. 696, at p. 699 ; *Group* v. *Finletter* 108F Supp. 327 D.D.C. 1952) and *Armour* v. *Freeman* 304F 2d. 404 (D C.Cir. 1962) ; Cf. Jaffe, " Judicial Control of Administrative Action " p. 692 ; Th. Tsatsos " The Recourse for Annulment before the Council of State ", 2nd Ed. p. 284 ; Ph. Vegleri, " The Compliance of the Administration to the Decisions of the Council of State " 1934, pp. 112 to 115.

(4) *Regarding the ground that the applicant would suffer irreparable damage if the provisional order is refused* :—

(*a*) Before proceeding any further, I would like to observe that it is a well established principle of administrative law that the damage alleged to result from the imminent execution of the administrative act complained of must be specified in the application in a concrete way. Vague allegations about it are not capable of its proper appreciation and for this reason alone the application for a provisional order can be dismissed. This principle has been accepted in a number of decisions of the Committee of Stays of the Greek Council of State (*see e.g.* E.A. 13).

(*b*) Be that as it may, the allegation of ill health made by the applicant in his affidavit, coupled with the medical certificate produced, does not amount in my opinion to proof of irreparable damage as required by law.

(*c*) But even if irreparable damage was proved to have been caused, this is not in itself sufficient to justify a Court in granting a provisional order. As it was said in the case of *Virginia Railways Corporation* v. *U.S.A.*, 272 U.S. 658 " a stay is not a matter of right, even if irreparable injury might otherwise result to the appellant. It is an exercise of judicial discretion ". In the exercise of this discretion the irreparable damage has to be weighed by the Court as against the serious obstacles that the making of the order for stay will cause to the proper functioning of the administration (*see Tsatsos, supra*, at p. 285, para. 236).

(5) For all the above reasons the provisional order applied for is refused. Yet, in the circumstances of this case, I think it proper to deal with this recourse the soonest possible.

Application for provisional order dismissed. Respondent's costs in cause.

Cases referred to :

Cleanthis Georgiades (No. 1) v. *The Republic* (1965) 3 C.L.R. 392, at p. 395 ;

Iordanou (No. 2) v. *The Republic* (1966) 3 C.L.R. 696, at p. 699 ;

Group v. *Finletter* 108F Supp. 327 (D.D.C. 1952) ;

Armour v. *Freeman* 304F 2d. 404 (D.C. Cir. 1962) ;

Virginia Railways Corporation v. *U.S.A.*, 272 U.S. 658 ;

See also the decisions of the Greek Council of State : 19/1933, 42/1933, 21/1933.

Books referred to :

Themistocles Tsatsos "The Recourse for Annulment before the Council of State ", 2nd Ed. p. 284 ;

Phedon Vegleris, " The Compliance of the Administration to the Decisions of the Council of State " (1934) pp. 112 to 115.

Jaffe, " Judicial Control of Administrative Action " p. 692.

Application.

Application for a provisional order suspending the effect of applicant's transfer from Neapolis Gymnasium to the Evening Gymnasium in Nicosia, pending the final determination of a recourse against such transfer.

K. Michaelides, for the applicant.

A. Angelides for *G. Tornaritis*, for the respondent.

Cur. adv. vult.

The following decision was delivered by :—

A. LOIZOU, J. : By this recourse the applicant, a Director Grade ' A ' in the Education Service—headmaster of Neapolis Gymnasium for the last two years—challenges the validity of his transfer and/or posting from the said Gymnasium to the Evening Gymnasium of Nicosia, and seeks a declaration that the said decision of the respondent is null and void and of no effect whatsoever.

The grounds of law upon which the application is based are the following :—

" (1) In accordance with section 39 of the Public Education Service Law 10 of 1969, the Committee of the Education Service effects transfers of education officers.

(2) The purported transfer of the applicant by respondent is contrary to section 39 of Law 10 of 1969, and consequently illegal as same is not within the ambit of para. 2 of section 39.

(3) The purported transfer and/or posting of applicant results in the performance of duties by the applicant not included in the duties laid down in the scheme of service relating to the substantive post which he was holding immediately prior to such transfer and it amounts in effect to applicant's demotion.

(4) Even if respondent was empowered to make the decision complained of, the respondent wrongly exercised its discretion and acted in abuse or excess of its powers by disregarding applicant's seniority, grade, experience and successful years of service and by taking into consideration immaterial or improper factors. Applicant's transfer was made merely and solely for the purpose of facilitating the transfer to Neapolis Gymnasium of Mr. Karayianis."

This recourse was filed on the 25th August, 1971, together with an application for a provisional order staying applicant's transfer until the final determination of the aforesaid recourse.

In support of the said application the applicant filed an affidavit, the tenor of which is that the said transfer amounts to a demotion in view of the nature and size of the Evening Gymnasium as compared with the Neapolis Gymnasium ; that he is of ill health and cannot teach in the evening ; his transfer was not made by the competent organ and in any event " for the reasons set out in the recourse such transfer is illegal and that the said transfer will cause him damning and irreparable damage ". In addition to the contents of this affidavit the applicant produced a copy of a certificate from Dr. Constantinides the Government Chest Specialist, which said that " applicant suffers from hypertasis and holisteronaemia and that the transfer has had adverse effects on the psychological condition and health of the applicant in general, having been interpreted by the applicant as degrading for his prestige and his long career in education ".

In arguing the case for the applicant, his learned counsel has made it clear that he is relying more on the ground that the transfer is so flagrantly illegal that a stay should be

ordered to prevent the illegality, than that the applicant will suffer irreparable damage if the transfer is not postponed by a provisional order.

According to counsel for the applicant, under our law the flagrant illegality of an administrative act is in itself sufficient ground for the Court to order stay of execution. This, he argued, is deducted from passages in two judgments of a Judge of this Court, namely, (*a*) *Cleanthis Georghiades* (No. 1) v. *The Republic* (1965) 3 C.L.R. p. 392, where at page 395 it is stated :—

> " There is no doubt that serious questions, mainly questions of law, arise for determination in the present Case. So, this is not a Case where the claim of applicant is so obviously unfounded as to lead the Court to the conclusion that it is not proper in any case to grant the provisional order applied for. But it is not either a case where the claim of applicant is clearly bound to succeed ; had it been so this could have been a factor militating strongly in favour of the making of the provisional order. The merits of the Case, therefore, cannot have a decisive effect on the outcome of the application for a provisional order.
>
> It is a cardinal principle of administrative law that where a provisional order is sought in an administrative recourse and where on the one hand the non-making of the order will cause damage, even irreparable, to the applicant but on the other hand the making of such an order will cause serious obstacles to the proper functioning of the administration then the personal interest of the applicant has to be subjected to the general interest of the public and the provisional order should not be granted. It goes without saying that where the non-making of the provisional order will not cause to an applicant irreparable damage such an order will not be made, in any case, on the strength of the application made by applicant for the purpose.

And (*b*) *Iordanou* (No. 2) v. *The Republic* (1966) 3 C.L.R. 696, where at p. 699 it is stated :

> " It is correct that on the face of the recourse there do appear serious allegations by which applicant is challenging his transfer but they do not amount, on the material before me at present, to such a case of flagrant illegality of the transfer in question, as would

make it necessary for this Court to intervene and prevent it from taking effect at this stage. They are matters to be gone into properly at the trial of this recourse."

In my opinion it is correct to say that the merits of a recourse for annulment of an administrative act are factors to be taken into consideration in deciding whether or not a provisional order for a stay will be granted. The flagrant illegality of an administrative act is a ground for granting a provisional order even if no irreparable damage has been proved and even when serious obstacles will be caused to the administration. This, it appears, is also a view propounded in Greece, as can be seen from the following passage in the textbook, by Professor Tsatsos 'The Recourse for Annulment before the Council of State', 2nd Ed. page 284 :—

*«Ταῦτα πάντα ὅλως ἀσχέτως πρὸς τὸ βάσιμον ἢ μὴ τῆς αἰτήσεως ἀκυρώσεως, ἡ ὁποία ἐπιβάλλεται μὲν νὰ ἔχῃ προηγηθῇ τῆς αἰτήσεως ἀναστολῆς, ἀλλ' ἀποτελεῖ τυπικὴν μόνον προϋπόθεσιν αὐτῆς. Ἐν ἢ περιπτώσει ὅμως ἡ αἴτησις ἀκυρώσεως εἶναι προδήλως ἀπαράδεκτος ἢ βάσιμος συγχωρεῖται ἡ περὶ τούτου γνώμη τῆς Ἐπιτροπῆς νὰ ἐπηρεάσῃ τὴν περὶ τοῦ κατ' οὐσίαν ἀπαραδέκτου τῆς αἰτήσεως ἀναστολῆς κρίσιν αὐτῆς, καὶ ἂν ἀκόμη ἡ ζημία τοῦ αἰτησαμένου τὴν ἀκύρωσιν εἶναι ἀνεπανόρθωτος, ὡς καὶ ἀντιστρόφως ἐὰν εἶναι προδήλως παραδεκτὴ καὶ βάσιμος ἡ περὶ ἀκυρώσεως αἴτησις αὐτοῦ, εἶναι δηλαδὴ προδήλως ἄκυρος ἡ προσβαλλομένη πρᾶξις, συγχωρεῖται νὰ διαταχθῇ ἡ ἀναστολὴ καὶ ἂν ἀκόμη ἐκ τῆς *ἀναστολῆς ἐπέρχεται πρόσκομμα εἰς τὴν λειτουργίαν* τῆς διοικήσεως ἢ τὰ ἐκ τῆς ἐκτελέσεως τῆς πράξεως ἀποτελέσματα δὲν εἶναι ἱκανὰ νὰ προξενήσωσιν ἀνεπανόρθωτον ζημίαν. Τοῦτο προκύπτει ἐκ τοῦ νόμου, διότι ναὶ μέν, ἐφ' ὅσον οὐδὲν ὁρίζεται σχετικῶς, ἡ Ἐπιτροπὴ δέον νὰ λάβῃ λόγους ὑπ' ὄψιν ἀμέσως καί, οὕτως εἰπεῖν ἀποκλειστικῶς πρὸς τὸ αἴτημα τῆς ἀναστολῆς συνδεομένους, ἀλλ' ἐφ' ὅσον εἶναι πρόδηλον τὸ ἀπαράδεκτον ἢ τὸ ἀβάσιμον ἢ τὸ παραδεκτὸν καὶ βάσιμον τῆς αἰτήσεως, ἐ.π. ἐξ ἀποφάσεως τοῦ Συμβουλίου τῆς Ἐπικρατείας ἐπὶ ὁμοίας ὑποθέσεως, συγχωρεῖται, ἵνα μὴ ἐπέρχωνται ἀσκόπως ἀνωμαλίαι εἰς τὴν λειτουργίαν τῆς διοικήσεως, νὰ λαμβάνωνται καὶ τὰ στοιχεῖα ταῦτα ὑπ' ὄψιν. Ἡ ἀντίθετος ἐκδοχὴ ἤθελεν ἀγάγει τὴν ἑρμηνείαν τοῦ νόμου εἰς ἀποτελέσματα προδήλως ἀντίθετα τοῦ κυρίου σκοποῦ, ὃν ἐπιδιώκει.»

The same view is favoured by Ph. Vegleri, in "The Compliance of the Administration to the Decisions of the

* An English translation of this text appears at pp. 354 – 355 *post*.

Council of State ", 1934, where at pages 112 to 114, he deals with the question of provisional orders for the stay of administrative acts and in particular at page 114 he says :—

*«Ὅλαι αἱ ἀποφάσεις αὗται ἀναγνωρίζουν εἰς τὰς περὶ ἀναστολῆς διατάξεις τοῦ νόμου χαρακτῆρα ἐξαιρέσεως εἰς τὸν κανόνα τῆς ἀμέσου ἐκτελεστότητος τῶν διοικητικῶν πράξεων, ἐκ τοῦ χαρακτῆρος δὲ τούτου ἀρύονται τὰ αὐστηρὰ πλαίσια τοῦ κριτηρίου, ἐπὶ τῇ βάσει τοῦ ὁποίου ἀποφαίνονται ἐπὶ τῶν περὶ ἀναστολῆς αἰτήσεων. Γενικῶς δὲ ἡ νομολογία αὕτη ἀποφεύγει νὰ ἐρευνήσῃ τὸ ζήτημα τῆς βασιμότητος τῆς προσφυγῆς, ὡσεὶ ἀποφεύγουσα νὰ προδικάσῃ· ὁπωσδήποτε τὴν ἐπικειμένην ἀπόφασιν τῆς Ὁλομελείας. Μόνον εἰς τὰς περιπτώσεις, ὅπου ἡ ἐκκρεμοῦσα προσφυγὴ φαίνεται καταδήλως ἀβάσιμος, σταθμίζεται τὸ στοιχεῖον τοῦτο, τὸ ξένον πρὸς τὸ κριτήριον τῆς ἀνεπανορθώτου ἀποκαταστάσεως (42/1933).»

And at page 115 the same Author concludes :—

*«Ἐν τῇ παρούσῃ περιπτώσει, εἶναι ἀναμφίβολον ὅτι τὸ βάσιμον ἢ μὴ τῆς προσφυγῆς ὀφείλει καὶ τοῦτο νὰ σταθμίσθῃ, ἐπ' εὐκαιρίᾳ τῆς περὶ τὴν ἀναστολὴν συζητήσεως, ἐν τελευταίῳ οὕτως εἰπεῖν βαθμῷ τῆς κρίσεως τῆς ἐπιτροπῆς. Ἡ συνδρομὴ ὅλων τῶν προϋποθέσεων τῆς ἀναστολῆς—βλάβη ἀνεπανόρθωτος, οὐχὶ ματαίωσις σπουδαίων σκοπῶν τῆς διοικητικῆς λειτουργίας—δὲν θὰ ἤρκει πρὸ καταδήλως ἀνυποστάτου προσφυγῆς. Ἤδη δέ, ὡς καὶ ἀνωτέρω ἐλέχθη, ἡ νομολογία ἐστάθμισε καὶ τὸν παράγοντα τοῦτον πρὸ (ἐν τῇ 19/1933) καί, ἔν τινι μέτρῳ, μετὰ (ἐν τῇ 42/1933) τὴν ὑπ' ἀρ. 21/1933 ἀπόφασιν αὐτῆς. Θᾶττον δὲ ἢ βράδιον θὰ θυσιάσῃ ἀκόμη σαφέστερον εἰς τὸν παράγοντα τοῦτον).»

The principle that the manifest illegality of an administrative act is a ground upon which an order for a stay may be granted has also been accepted in American jurisprudence, more explicitly than in the jurisprudence of other countries. It can be seen in Jaffe " Judicial Control of Administrative Action " p. 692, where it is stated that where the administrative action is illegal the concern with the public interest is on its face easily resolved. The American authorities for this proposition are : *Group* v. *Finletter* 108F Supp. 327 (D.D.C. 1952), and *Armour* v. *Freeman*, 304F 2d. 404 (D.C. Cir. 1962). In fact such a ruling on an application for a provisional order usually in the United States makes vain a pursuit of the merits. It may, therefore be said with certainty that when an administrative act is flagrantly illegal a provisional order may

* An English translation of the above texts appears at pp. 355 – 356 *post*.

be granted. It is, however, a ground to be approached with the utmost caution, as it may be tantamount to disposing the case on its merits, something discouraged by Rule 13 of the Supreme Constitutional Court Rules, though this rule cannot be held as divesting this Court from being the watchdog of legality.

What remains to be considered, therefore, is whether the grounds upon which this recourse is based are such as to justify me in saying outright, on the material adduced for the purposes of the provisional order only, that the transfer of the applicant is so manifestly illegal that this reason should outweigh the secondary factor of irreparable damage.

The grounds are the illegality of the transfer, on account of it having been made by an incompetent organ, and abuse of power. The first ground is closely interwoven with the schemes of service and the obligations of the applicant under the terms of his employment, the determination of which to some extent will depend on the evidence to be adduced, and that material is not as yet before me. The ground of abuse of power has already been conceded by counsel for the applicant that it cannot be entertained at this stage, as for that ground the burden of proof is on the applicant and there has been no attempt to discharge it at this stage. The applicant, therefore, cannot succeed on this ground, as there is no manifest illegality.

I turn now to the second ground, namely that the applicant will suffer irreparable damage if his transfer is not postponed. Before proceeding any further, I would like to observe that it is a well established principle of administrative law that the damage alleged to result from the imminent execution of the administrative act complained of must be specified in the application in a concrete way. Vague allegations about it are not capable of its proper appreciation and for this reason alone the application for a provisional order can be dismissed. This principle has been accepted in a number of decisions of the Committee of Stays of the Greek Council of State and I need only mention one, namely, E.A. 13. I could on this ground alone dismiss the present application as well, but I felt that I should not do so and that I should examine whether the allegation of ill health made by the applicant in his affidavit, coupled with the medical certificate produced, *Exhibit* 1, hereinabove referred to, amounts to proof of the irreparable damage by law required. I am afraid I have not been satisfied on this ground. But even if irreparable damage was proved

to have been caused, this is not in itself sufficient to justify a Court in granting a provisional order. As it was said in the case of the *Virginia Railways Corporation* v. *U.S.A.*, 272 U.S. 658 " ... a stay is not a matter of right, even if irreparable injury might otherwise result to the appellant. It is an exercise of judicial discretion ". In the exercise of this discretion the irreparable damage has to be weighed by the Court as against the serious obstacles that the making of the order for stay will cause to the proper functioning of the administration. As stated in Tsatsos (*supra*) at page 285 para. 236 :—

*«Ἡ ἀναστολὴ τῆς διαταχθείσης μεταθέσεως τοῦ δημοσίου ὑπαλλήλου κατ' ἀρχὴν παρεμβάλλει προσκόμματα εἰς τὴν εὔρυθμον λειτουργίαν τῆς διοικήσεως. Δέον ὅθεν ὄχι μόνον ἡ ζημία ἐκ τῆς μεταθέσεως νὰ εἶναι ἰδιαζόντως μεγάλη, ἀλλὰ καὶ ν' ἀποβαίνῃ βεβαία ἡ μὴ παρεμβολὴ οὐσιώδους προσκόμματος εἰς τὸ ἔργον τῆς διοικήσεως ἐκ τῆς ἀναστολῆς ἵνα ἡ σχετικὴ αἴτησις γίνῃ δεκτή.»

But there is something more to be said. As stated by Tsatsos (*supra*) p. 284, " even in cases where irreparable damage will inevitably be caused on account of the duration of the *sub judice* act, the speedy trial of the recourse may lead to the dismissal of the application for stay ". Though I have not accepted that irreparable damage will be caused to the applicant, yet, in the circumstances of this case, I think it proper to deal with this recourse the soonest possible and I fix same for directions on the 11th September, 1971, at 9 a.m.

For all the above reasons the application for a provisional order is dismissed. Regarding costs they should be respondent's costs in cause.

Application for provisional order dismissed. Order for costs as above.

TRANSLATION

This is an English translation of the Greek texts, published at pp. 351, 352 and 354, *ante*, as prepared by the Registry :

(*a*) *Text of p.* 351.

" All these quite independently from the question of the merits or not of the recourse for annulment which should preceed the application for stay, but

* An English translation of the above text appears at p. 356 *post.*

constitutes only a formal prerequisite thereof. In case, however, the recourse for annulment is manifestly unacceptable or unfounded it is permitted, if such view is taken by the Committee about the recourse, to affect also its judgment on the unacceptability of the merits of the application for a stay, even if the damage to be caused to the applicant for the annulment is irreparable, and *vice versa* if the application for annulment is manifestly acceptable and well-founded, that is to say the *sub judice* act is obviously void, it is permitted if a stay is ordered even if such a stay places obstacles to the functioning of the administration or the effects from the execution of the act are not capable of causing irreparable damage. This is derived from the law, because, since nothing is provided in this connection, the committee should take into consideration grounds which are directly, and so to speak, exclusively related to the application for stay, but when it is evident that the recourse is unacceptable or unfounded or acceptable and well-founded *e.g.* on account of a decision of the Council of State in a similar case, it is permitted if such matters are taken into consideration, so as not to create undue anomalies to the functioning of the administration. The opossite view would lead the interpretation of the law to such results as are evidently contrary to the main intent aimed at".

(*b*) *First text of p.* 352.

"All these decisions recognise that in the provisions of the law dealing with stay there exists a character of exception to the rule of direct executability of administrative acts and it is from this character that the strict framework of the criterion, on the basis of which the application to stay is decided, is drawn. Generally these decided cases avoid entering into the merits of the recourse, as if they were avoiding in any case to prejudice the impending decision of the Full Bench. Only in cases where the pending recourse appears to be manifestly unfounded this element, which is foreign to the criterion of irreparable re-establishment, is considered. (42/1933)".

(*c*) *Second text of p.* 352.

"In the in stant case, it is beyond all doubt that, in the course of the hearing regarding the stay,

it has to be considered also whether the recourse is well-founded or not, in a final, so to speak, stage of the judgment of the Committee. The existence of all prerequisites for the stay—irreparable damage, non-frustration of important aims of the administrative functioning—would not be sufficient to balance a manifestly unfounded recourse. Decided cases have already, as stated above, considered this factor too, (in Case 19/1933) and, in a way, (in Case 42/1933) after their decision in Case No. 21/1933. Sooner or later decided cases will move more clearly towards this direction".

(*d*) *Text of p.* 354.

" The stay of the decision for the transfer of a public officer in principle causes obstacles to the proper functioning of the administration. But for the relevant application to be granted the damage arising from the transfer should not only be exceptionally high, but also it should be certain that there would be no serious obstacles to the work of the administration on account of the stay."