

1970  
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[VASSILIADES, P., TRIANTAFYLLIDES, JOSEPHIDES, STAVRINIDES,  
L. LOIZOU, HADJIANASTASSIOU, JJ.]

—  
CONSTANTINOS  
IOANNIDES

v.

REPUBLIC  
(COUNCIL OF  
MINISTERS  
AND ANOTHER)  
AND  
DEMOS ZENIOS  
AND OTHERS

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS IOANNIDES,

*Applicant,*

*and*

THE REPUBLIC OF CYPRUS,  
THROUGH THE COUNCIL  
OF MINISTERS AND ANOTHER,

*Respondents,*

*and*

DEMOS ZENIOS AND OTHERS,

*Ex parte Respondents.*

(Case No. 344/70).

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*Contempt of Court—Contempt of the Supreme Court—Provisional Order made by a Judge of the Supreme Court on an application in a recourse under Article 146 of the Constitution—Provisional Order suspending applicant's deportation—Order deliberately disobeyed by non-parties to the cause who, however, had full knowledge of such order—Offence committed—Article 150 of the Constitution (cf. also Article 162 thereof).*

*Contempt of Court—By police officers and public officer—"Superior orders" no defence—"No one can plead the command of a superior, were it the order of the Crown itself, in defence of conduct otherwise not justified by law"—Principle applied.*

*Contempt of Court—Nature of the contempt proceedings—Statement of the law of contempt—Articles 150 and 162 of the Constitution—Cf. section 42 of the Courts of Justice Law 1960 (Law of the Republic No. 14 of 1960) and section 121(c) of the Criminal Code, Cap. 154—Contempt of Court—Distinctions in England—Criminal contempt and contempt in procedure or civil contempt—Cf. Supreme Court Practice (English) 1970, Vol. I at pp. 712–713; (English) Rules of the Supreme Court, (1965) Order 52, rule 1—Cf. Oswald's contempt of Court (1910) 3rd ed. pp. 6, 106–107; Halsbury's Laws of England, 3rd ed., Vol. 8, p. 2, para. 1, pp. 20–21, paragraphs 37, 38 and 39.*

*Contempt of Court—Sentence—Mitigating circumstances—Unqualified apologies.*

*Superior orders—Legal effect—No defence—See supra.*

On Friday afternoon November 6, 1970, the Minister of Interior called the Acting Commander of the Police (one of the respondents in these contempt of Court proceedings) and handed over to him a detention and deportation order respecting the applicant Constantinos Ioannides and instructed him that his orders should be executed on the following morning unless the Police had instructions from him to the contrary. The Government decided the applicant's deportation under the Aliens and Immigration Law, Cap. 105, treating him as an "alien" within the meaning of the word in the statute and as a "prohibited immigrant" under section 6(1)(g) of the same statute, liable to deportation under section 14(1) under which the deportation and detention orders were made by the Minister.

On the morning of the next day (November, 7) at about 8 a.m. the applicant was arrested at his home at Kyrenia for the purposes of the said deportation order. Thereupon he gave instructions for the filing of a recourse under Article 146 of the Constitution, challenging the validity of the deportation order. In Police custody under an executive warrant issued for the purposes of the said order, the applicant was taken to the Nicosia airport for embarkation on the next plane for Athens. The party arrived at the airport at 10.15 a.m. approximately.

In the meantime, soon after 9 a.m., the aforementioned recourse was filed together with an *ex parte* application on behalf of the applicant for a provisional order. In view of the urgency of the matter this *ex parte* application (supported by affidavit evidence) was taken by a Judge of this Court at 9.30 a.m. On the material before him, the Judge duly appreciating the urgency and the seriousness of the matter, made the provisional order subject matter of these contempt proceedings. The material part of this order reads :

"This Court doth order that, until further order, the respondents as well as any other organs, authorities or persons in the Republic, acting on the instructions of the respondents or otherwise, be and are hereby prohibited and restrained from in any way taking action in order to deport the applicant from Cyprus or from in any way

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taking part or co-operating in bringing about such a deportation. This Order is made returnable at 12 noon today, November 7, 1970 ”.

The making of this order and its contents were communicated forthwith to the appropriate quarters, including the following six respondents in these contempt proceedings viz. Inspector of Police Zenios (respondent No. 1), Chief Inspector of Police Solomonides (respondent No. 2), the Chief Migration Officer D. Karakoulas (respondent No. 3), the Ag. Commander of the Police Savvas Antoniou (respondent No. 4), the Assistant Superintendent of Police Theocharides (respondent 5) and the General Manager of the Air Company (the Cyprus Airways Co. Ltd.) Evdokios Savva (respondent No. 6).

At about 12.30 p.m. on the same day the Chief Migration Officer (respondent No. 3) handed over to the General Manager of the Air Company (respondent No. 6) a so called letter or certificate of indemnity as required by the latter acting apparently on advice. This certificate of indemnity, which for obvious reasons is a document of cardinal importance in the case, reads as follows :

“ *To Whom it May Concern* : This is to certify that Mr. Demetrios Karakoulas (*viz.* the Chief Migration Officer, resp. 3) after instructions from the Commander of the Police (*viz.* meaning thereby the Acting Commander resp. 4, *supra*) hereby orders Cyprus Airways to proceed with the deportation of Constantinos Ioannides, of Kyrenia, despite the existence of a provisional order issued by the Supreme Court on the 7th November, 1970, which came to the knowledge of the said Mr. Karakoulas and is hereby attached.

(Sgd) D. Karakoulas,  
*Migration Officer.*

Directions by the Com-  
mander of Police.

From the Presidential Pa-  
lace.

12.25 p.m. 7.11.1970 ”.

As a consequence of this letter or certificate of indemnity, the applicant was taken to the nearby plane of the Cyprus Airways, which, thus, was allowed to take off for Athens at about 1 p.m. with the applicant aboard.

Immediately after the deportation of the applicant, counsel appearing for him instituted in the Supreme Court these contempt of Court proceedings by way of applications by summons in the original application (recourse) No. 344/70, supported by affidavit evidence.

The case for the applicant is that the said provisional order made by the Court was deliberately disobeyed in circumstances amounting to a serious contempt which this Court has jurisdiction to punish by express provisions in the Constitution under Article 150 (*infra*). As regards the respondents to the recourse *viz.* the Council of Ministers and the Minister of the Interior, counsel for the applicant conceded that there was no evidence to connect them directly with the action taken in disregard of the provisional order. Article 150 of the Constitution reads :

“The Supreme Constitutional Court (now this Court) shall have jurisdiction to punish for contempt of itself.”

Counsel for the respondents other than the air company and its officers, submitted that they were at all times acting under instructions from superior officers, believing in all good faith that their duty required them to act as they did. They now realised, counsel went on, that they should have reconsidered the position when they came to know of the provisional order ; and they filed the affidavit of apology on record.

The Court after reviewing the facts of the case and stating the law of contempt and applying the well settled principle that superior orders are no defence, found the respondents guilty and, by majority, imposed on them the following sentences :

- (a) Fines in the sum of £150 each (or two months' imprisonment in default) on the two senior officers, namely the Migration Officer (respondent No. 3) and the Acting Commander of the Police (respondent No. 4).
- (b) Fines in the sum of £75 each (or one month's imprisonment in default) on the three other Police Officers, namely Inspector Zenios (respondent No. 1) ; Chief Inspector Solomonides (respondent No. 2) ; and Assistant Superintendent Theocharides (respondent No. 5).
- (c) As for the general Manager of the Air Company (respondent No. 6), no fine should be imposed on him ; but he should pay his share in the costs.

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As to costs the Court, being of the opinion that in view of the nature of the case and its importance, the applicant is entitled to his costs for two advocates, on the scale applicable to claims between £500 and 2,000, made an order against each of the six respondents for the payment of one-sixth of the applicants' costs as above, within six weeks from taxation.

Cases referred to :

- Morris v. Crown Office* [1970] 2 W.L.R. 792, at p. 801 ;  
[1970] 1 All E.R. 1079, at pp. 1083, 1084 and 1087 ;  
*Mirachis v. The Police* (1965) 2 C.L.R. 28 ;  
*Polykarpou v. The Police* (1970) 2 C.L.R. 111 at p. 116 ;  
*Christodoulou and The Republic*, 1 R.S.C.C. 1 ;  
*Seaward v. Paterson* [1897] 1 Ch. 545, C.A. ;  
*Scott v. Scott* [1913] A.C. 417, at pp. 455 *et seq.*, 458 ; [1911-  
1913] All E.R. Rep. 1, at p. 19 ;  
*In re Maria Annie Davies*, 21 Q.B.D. 236, at p. 238 ;  
*Attorney-General v. James and Others* [1962] 2 Q.B. 637, at  
p. 641 ;  
*Helmore v. Smith* (2) 35 Ch. D. 449, at p. 455 ;  
*Rex v. Davies* [1906] 1 K.B. 32, at p. 40 ;  
*Lord Wellesley v. Earl of Mornington* [1848] 11 Beav. 180 ;  
*O' Shea v. O' Shea, ex parte Tuohy* [1890] 15 P.D. 59, C.A. ;  
*Marengo v. Daily Sketch and Sunday Graphic Ltd.* [1948]  
1 All E.R. 406, at p. 407 ;  
*Elliot v. Klinger and Others* [1967] 3 All E.R. 141 ;  
*Yianni v. Yianni* [1966] 1 W.L.R. 120 ;  
*In re Bramblevale Ltd.* [1970] Ch. 128, C.A. ;  
*Comet Products U.K. Ltd. v. Hawkex Plastics Ltd. and Another*  
"The Times", December 9, 1970 ;  
*Woodward v. King* [1674] 2 Ch. Cas. 203 ;  
*Woodward v. Earl of Lincoln* 3 Swan. 626 ;  
*Drewry v. Thacker* [1819] 3 Swan. 529, at p. 546 ;  
*Fennings v. Humphrey* [1841] 4 Beav. 1 ;  
*Blake v. Blake* [1844] 7 Beav. 514 ;  
*Chuck v. Cremer* [1846] 2 Ph. 113 ;  
*Russel v. East Anglian Rly Co.* [1850] 3 Mac. and G. 104 ;  
*In re Wilde* (a solicitor) [1910] 1 Ch. 100 ;  
*In re Battersby's Estate* [1892] 31 L.R. Ir. 73.

## Contempt of Court Proceedings.

Proceedings for contempt of Court for disobedience to a provisional order given in a recourse against the validity of a deportation order concerning the applicant.

*Fr. Markides with K. Saveriades, L. Papaphilippou, and C. Velaris, for the applicant.*

*A. Frangos, Senior Counsel of the Republic, for ex-parte respondents Nos. 1-5.*

*G. Chryssafinis with G. Polyviou for ex-parte respondent No. 6.*

*Cur. adv. vult.*

The following decisions were read on December 4, 1970 :—

VASSILIADES, P. : These proceedings for contempt arise from disobedience to a provisional order made in recourse No. 344/70.

The Court has treated the matter, right from the beginning, as a case of special and exceptional importance. We are grateful to the Attorney-General of the Republic and to all other learned counsel who appeared before us, for the assistance given to us in dealing with the matter.

We have considered the case with all due care. After a full public hearing we have anxiously considered it both in conference and individually. We have eventually reached conclusions on the basis of which we can now dispose of the case in respect of some of the respondents. As to the others, for the reasons which we shall presently state, the matter will have to wait for a little longer ; we shall then give also the reasons for our conclusions.

We can now take the case of each of the respondents separately.

As regards the Minister of Interior, the case presents no difficulty. Learned counsel for the applicant rightly, we think, conceded that there is no material upon which this respondent can be called upon to answer a case for contempt. The application against him is, therefore, dismissed.

We take next the cases of the Captain of the aircraft by which the applicant was taken out of Cyprus, Peter Moffat Southwick Ecob, respondent No. 4 in the application filed

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on 7.11.70 ; and the two policemen, sergeant Yiannis Sofroniou, respondent No. 3 in the application filed on 9.11.70 ; and constable Theodoros Stylianou, respondent No. 5 in the same application. These three respondents have filed affidavits with a full apology. The first of them at the earliest opportunity ; the other two at a later stage in the proceedings. The conduct of these three respondents, who rightly, in our opinion, admitted committing contempt, was such, in the course of events, that in our view they should be unconditionally discharged. We discharge them forthwith without any order for costs against them ; adding, as regards Captain Ecob, that we think that counsel for the applicant rightly expressed appreciation for his stand in insisting to comply with the Court order until the last.

We now come to the owners of the aircraft, Cyprus Airways Ltd., respondents in the application filed on 12.11.70. We think that in the circumstances in which the servants of the company became involved in this matter at the airport that morning (7.11.70) and in view of the full apology filed on behalf of the company at the earliest opportunity for any contempt which may have been committed, the company should also be discharged unconditionally without any order for costs against them ; and we discharge them accordingly.

As to the remaining respondents, namely, police officers Demos Zenios, Kyriacos Solomonides, and the Migration Officer Demetris Karakoulas, respondents Nos. 1, 2 and 3 in the application filed on 7.11.70 ; and the Ag. Commander of Police Savvas Antoniou, police officer Theodoros Theodorides, and the general manager of Cyprus Airways Ltd., Evdokios Savva respondents Nos. 1, 2 and 4 in the application filed on 9.11.70, the position stands as follows :

They have all filed affidavits containing a full apology, Evdokios Savva filing his affidavit at the earliest opportunity. As regards all these six respondents, for the reasons which shall be stated in the judgment at a later stage, this Court finds them all guilty of contempt in acting in disregard and disobedience of the provisional order after it came to their knowledge.

Up to this point we find ourselves in agreement. But as to the course to be taken regarding the manner in which each of these six respondents is to be dealt with for the contempt committed by him, there is difference of opinion ; and I shall ask my brother judges to state in their own words their respective views.

I am of the opinion that, as this contemptuous conduct has affected the legal right of the applicant to be present at the hearing of his recourse against his deportation from the Island (which right the provisional order was intended to protect) and as this Court has a statement made in the main recourse by the advocate of the Republic, acting on behalf of the respondents, that the applicant shall be allowed to return to the Island by the 21st of this month (December, 1970) for the purposes of the recourse, which is fixed for hearing early in January, 1971, consideration regarding the appropriate punishment to be imposed for the contempt committed by each of these remaining six respondents should be postponed until Tuesday, the 12th January, 1971, when we may also be able to deliver our reasons for our decision in the case of each respondent.

I would moreover add that in my opinion applicant's return to the Island for the purposes of his recourse, redressing to a considerable extent the consequences of the contemptuous conduct of the respondents, may be a strong mitigating factor in their favour, justifying such postponement. I would also make it clear that in my opinion the Court's decision for the punishment of the contempt should have nothing to do with the merits of applicant's recourse against the deportation order, the decision in which should, I think, in any case be made and announced after the Court's final judgment in the contempt proceedings.

TRIANTAFYLIDIS, J. : In the light of statements made by counsel for the parties, and of the affidavits filed by the six remaining respondents (Zenios, Solomonides, Karakoulas, Antoniou, Theocharides and Savva) by which they unreservedly express their deepest regret for disobeying the provisional order made on the 7th November, 1970, and they ask for mercy on the part of the Court, as well as in view of the declaration made by counsel appearing for the Attorney-General to the effect that the applicant will be allowed to return to Cyprus for the purposes of his recourse against his deportation, I have formed an opinion regarding what the decision of the Court should be about the said respondents.

As, however, it is not the unanimous view of the members of the Court that a final decision concerning these respondents can be reached at this stage and as I think that, notwithstanding the desirability of avoiding delay in these proceedings, it would be in the interests of justice to afford the opportunity to each member of the Court to reach

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his final conclusion at what he considers to be the proper time, I have decided to agree to a postponement of the decision of the Court regarding the remaining respondents until the 12th January, 1971, as fixed by the President of the Court. I do agree with him that such decision should be given before, and independently of, the outcome of the recourse of the applicant.

JOSEPHIDES, J. : I regret I am unable to agree to the proposed postponement of our judgment.

In considering whether the delivery of our judgment as to punishment in respect of the remaining six respondents should be postponed to the 12th January, 1971, I take into account the following matters : (a) The statement on behalf of the Attorney-General of the Republic that the applicant will be allowed by the Government of the Republic to return to Cyprus on the 21st December, 1970, for the purposes of his case ; (b) that contempt proceedings are proceedings involving a punishment against the property or liberty of the citizen and that they should be brought speedily to an end ; (c) that we have before us the full and unqualified apologies of all the respondents as well as all the necessary material for reaching our decision now ; and (d) that it is not within the power of any of the said respondents to allow the applicant to return to Cyprus, but that that matter lies within the power of the Government of the Republic.

*I might have considered favourably the question of postponing the delivery of our judgment if the persons now charged with contempt before us were parties to the original recourse who had disobeyed the provisional injunction of the Court and it was within their power to comply with such injunction. Here we are not concerned with the disobedience of a prohibitory order by a party to the recourse, but with strangers to the recourse, who have aided the breach of such order and thus obstructed the course of justice.*

For these reasons, with all respect, I am of the view that, having reserved our judgment two weeks ago, we should deliver it today in respect of all the respondents, and not postpone it any longer.

STAVRINIDES, J. : I do not think that the decision regarding the remaining respondents, or any of them, should be influenced by future events over which they have no control. However, since one member of this Court at least

takes a different view, I agree to the adjournment proposed by him ; for if there is no adjournment a member who takes that view will be expected to give a decision on what he considers insufficient material, whereas if there is those of us who would otherwise have proceeded to give our decisions at this stage will still be able to give the decisions that in our own judgments best meet the case at the next sitting.

LOIZOU, J. : I regret that I also find myself unable to agree with the majority of my brethren on the question of postponing delivery of judgment.

It has been responsibly stated in Court that it has been decided by Government that the applicant will be allowed to return and remain in Cyprus for so long as it is necessary for the purposes of his recourse. I must assume that this decision will be implemented and I am quite ready to base my judgment on this assumption.

But if, for any reason, the applicant is not allowed to return I cannot allow such fact to weigh against any of the respondents because as I have, I think, clearly intimated in the course of these proceedings I do not think that it is within the powers of any of them either to allow applicant to return or prevent his entry in the Republic.

For the above reasons I do not consider a postponement necessary.

HADJIANASTASSIOU, J. : In this case, the applicant seeks to commit the *ex parte* respondents for contempt of Court. On November 16 and 18, 1970, each respondent has filed an affidavit stating that they fully realize that on account of their conduct the course of justice was obstructed, and unreservedly expressed their apology to this Court, declaring at the same time their respect and obedience to its orders.

No doubt, a deliberate attempt was made by each offender to disobey and obstruct the execution of the provisional order of this Court, in such a way so that the course of justice was deflected or interfered with, with the result that the applicant, Mr. Constantinos Ioannides, was deported from Cyprus.

Let me say, at once, that although I have also formed an opinion, nevertheless, I find myself in agreement with the majority of this Court, with regard to the course to be

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taken regarding the manner in which each of these six offenders has to be dealt with for the contempt committed. I confess, however, that I fully realize that in criminal contempt proceedings, this Court, or indeed any other Court in the Republic, should proceed without delay to impose such punishment which should be commensurate with the offence ; and it may be severe where the contempt is grave, as in cases of the present nature.

In this frame of mind, I have agreed to the adjournment of this case, as I take the view that the return of the applicant to his native land for the purpose of pursuing his recourse before one of the Judges of this Court would, in reality, purge to a considerable extent the effect of the contempt of Court, and the rule of law would, therefore, be vindicated because of the return of the applicant. With this approach, I have reached the view that such event would weigh with me as an important mitigating factor when I would be called upon at a later stage to consider what would be the proper punishment in the case of each offender. Needless to say, the sole purpose of proceedings for contempt is to give our Courts the power of effectively protecting the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented by anyone, either in authority or acting under superior orders.

VASSILIADES, P. : *In the result* the decision of the Court regarding the six respondents in question, is postponed by a majority decision until January 12, 1971, at 10.30 a.m.

*Order accordingly.*

The following judgments were read on January 12, 1971:—

VASSILIADES, P. : At about 8 o'clock in the morning of November 7, 1970 (a Saturday morning) a party of Police Officers, under the orders of Chief Inspector Solomonides, went to the house of the applicant with a deportation order and a detention warrant in their pocket. They asked to see him ; and when he appeared, the Commanding Officer informed the applicant that he had police instructions to take him to Nicosia. When the applicant asked for the reason, the officer replied that he had received orders to protect applicant's life during the previous night and to take him to Nicosia on that morning.

The previous evening (Friday, November 6) the applicant happened to see the same Police officers at 'Marangos Cafe' (Kentron Marangou). The applicant was with

his brother who speaks in his affidavit, of the exchange of greetings between the Commanding Officer and the applicant ; but does not speak of any conversation between them. Apparently the Police were in Kyrenia on Friday evening but did not communicate to the applicant the object of their presence there.

Earlier on that day (Friday afternoon, 6.11.70) the Minister of Interior called the Ag Commander of the Police and handed over to him a detention and deportation order respecting the applicant and instructed him personally that his orders should be executed on the following morning unless the Police had instructions from him to the contrary. The Acting Commander conveyed personally the Minister's orders to the team of officers detailed to execute them ; and undoubtedly stressed the importance of their execution as planned. The special steps taken for the execution of these particular orders are indicative of the importance attached to them by the Minister concerned.

The applicant was to be deported to Greece as a Greek subject by naturalization. He was born in Kyrenia on March 3, 1938, of Greek-Cypriot parentage ; and lived with his family in Kyrenia. On June 29, 1955, at the age of 17, he was issued Cyprus Passport No. 61905, in order to proceed to Greece for higher education. According to the official evidence before us he left the island prior to August 16, 1955, for Greece, where he was admitted to the Military Academy, becoming a Greek National ; and on graduation a Cadet Officer in the Greek Army. He served in Greece until 1964, when he came to Cyprus together with other Greek Army Officers, in order to assist in the defence of the island. He was then issued Cyprus Passport No. 70064, apparently retaining at the same time his Greek nationality. When the Greek military personnel serving with the Cyprus Forces were withdrawn in December, 1967, by the Greek Government, the applicant decided to remain in the island ; and requested his release from the Greek Army. He remained ever since in Kyrenia, living with his family and working as a journalist. He got involved in politics ; and soon after the attempt at the President's life in March last, he was arrested as a suspect and was kept in custody together with other persons, accused of complicity in the attempt. He was acquitted by the Assize Court on the closing of the Prosecution case on October 21, 1970, returning to his home after his acquittal. The Government decided his deportation under the Aliens and Immigration Law, Cap. 105, treating him as an " alien " within the

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meaning of the word in the statute and as a "prohibited immigrant" under section 6 (1) (g) of the same statute, liable to deportation under section 14 (1) under which the deportation and detention orders were made by the Minister.

Returning now to the scene in applicant's home after the arrival of the Police and taking the position from the affidavit evidence in the proceeding before us, we have the following position: When the Chief Inspector in charge informed the applicant that his orders were to take him to Nicosia, the applicant replied that in that case he wanted to see his lawyer. Applicant's brother fetched Mr. Kaiser, who was on the spot within a matter of minutes. The Chief Inspector produced the deportation and detention orders; and after a short discussion regarding their effect, the applicant entered the Police car which drove him to Nicosia under Police custody. At the same time applicant's advocate, Mr. Kaiser, informed counsel in Nicosia, Mr. Papaphilippou and Mr. Panayiotis Demetriou, by telephone and communicated applicant's instructions for the immediate filing of a recourse challenging the validity of the deportation and detention orders; and for obtaining a provisional order securing applicant's right to be present at the Court proceedings.

The recourse (No. 344/70, now before us) was filed soon after 9 a.m. supported by affidavit evidence, together with an *ex parte* application on behalf of the applicant for a provisional order, likewise supported by affidavit evidence. In view of the urgency of the matter, this last mentioned application was taken at 9.30 a.m. by a Judge of this Court. Counsel for the applicant contending that his client is a citizen of the Republic pressed for a provisional order to prevent applicant's departure by the plane leaving for Athens at 10.15 that morning. Counsel informed the Court that another plane had already taken off for the same destination at 9.05 a.m. that same morning.

On the material before him, the Judge duly appreciating the urgency and the seriousness of the matter, made the order attached hereto. The material part reads:

"This Court doth Order that, until further order, the respondents as well as any other organs, authorities or persons in the Republic, acting on the instructions of the respondents or otherwise, be and are hereby prohibited and restrained from in any way taking action in order to deport the applicant from Cyprus

or from in any way taking part or co-operating in bringing about such a deportation. This Order is made returnable at 12 noon today."

The respondents named in the application were: (1) The Council of Ministers ; and (2) The Minister of Interior.

According to the affidavit of Mr. Panayiotis Demetriou, the making of the order and its contents were communicated by telephone to a responsible Clerk at the Ministry of Interior at about 9.38 a.m. At counsel's request, a Registrar of this Court communicated the contents of the order by telephone to an officer in the Immigration office at 9.43 a.m., the Principal Immigration Officer being away from the office at the time. The Registrar also informed the Superintendent of Police in charge of Nicosia, at 9.50 a.m. that such an order had been made ; and that steps should be taken to inform the officers concerned with the execution of the deportation order, accordingly.

With a sealed copy of the provisional order in his hand, one of the advocates acting for the applicant in Nicosia, Mr. Demetriou, rushed to the airport where, arriving at 10.05 a.m., found the Principal Immigration Officer, Mr. Karakoulas—one of the respondents in the contempt proceedings before us—and informed him of the contents and the effect of the provisional order. The reaction of the Immigration Officer was negative. In one of his affidavits he states that he refused to accept it " as it was not directed against him ". About five minutes later, at 10.10 a.m. the Police party under the orders of the Chief Inspector arrived at the Airport, bringing with them the applicant. The distance they had to cover from Kyrenia to Nicosia, about 35 miles, did not require all that time to cover ; (8.30 to 10.10) but we have it from one of the affidavits that the Police party passed from the house of applicant's fiancée in Nicosia, at the request of the applicant, to enable him to collect some personal articles.

On the arrival of the Police party, applicant's advocate Mr. Demetriou informed the Chief Inspector and the other Police Officers with him, of the existence of the provisional order and its contents ; drawing their attention to its effect and to the consequences of acting in disobedience. This was done in the presence of the applicant and of the Immigration Officer. The reaction of the Police Officers was likewise negative. According to affidavit evidence, the Chief Inspector and his colleagues made it clear that they had express orders to execute the deportation order in any event.

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While these happenings were taking place at the Nicosia International Airport, Mr. Papaphilippou, the advocate in charge of applicant's case at that stage, arrived at the airport together with the Court's Bailiff, at 10.35 a.m. They found in the Police Immigration Office, the Police Officers Solomonides and Zenios and the Immigration Officer, Mr Karakoulas, all *ex parte* respondents in this proceeding. A number of other persons were also present ; and owing to the congestion in the main office, the three respondents and the Bailiff went into an adjacent room where the Bailiff handed the sealed copy of the order to the respondents who read its contents. The Immigration Officer then communicated through the telephone regarding these developments with an official at the other end of the line ; the Bailiff states in his affidavit that he does not know who that other official was. At the end of the telephone communication, the matter was discussed between the respondents. Mr. Papaphilippou came into the room at that stage and took part in the discussion of the position. The respondents were determined to proceed with the deportation according to their instructions, regardless of the provisional order. In the meantime, applicant's advocates informed the airport office of the Cyprus Airways Ltd., on whose plane it was intended to place the applicant for the purposes of the deportation order, of the contents of the provisional order. Mr. Evdokios Savva, the General Manager of the company (one of the *ex parte* respondents) was at the airport that morning. The Captain of the aircraft was also likewise informed of the position.

The sealed copy of the order was now in the hands of the advocate as none else would keep it. The Bailiff returned to the Court ; and, taking two more sealed copies of the order, proceeded to serve one of them at the Ministry of Interior, at 11 a.m. (The Minister and the Director-General being away on official business at the time) and one at the office of the Secretary to the Council of Ministers, at about 11.10 a.m.

Soon after 11 a.m. the Police took the applicant by force to the tarmac and from there to the embarkation ladder of the plane. The applicant was handcuffed to a policeman ; and his resistance to forcible transportation to the plane was obviously of no avail to him. It was however sufficiently apparent to produce natural reactions among the friends and sympathisers of the applicant. At the ladder of the plane, the Captain made it clear that in the circumstances, he was not prepared to accept the applicant on board his

plane. This apparently unexpected development, made it necessary for the Police to take the applicant back to the waiting room.

In the meantime, Asst. Superintendent Theocharides (another respondent in the contempt proceedings) arrived at the airport with police reinforcements. A number of relatives and friends of the applicant started gathering, naturally feeling the effects of what was taking place. Part of the general public were also watching these unusual happenings at the airport. Inspector Zenios (another respondent) in his affidavit states that anticipating "violence on behalf of the applicant's friends and relatives" he asked for reinforcements which arrived under Asst. Superintendent Theocharides around 11.30 a.m. Mr. Pápaphilippou informed this officer also, of the existence and the contents of the provisional order. His reaction was equally negative.

Having given the background, I now propose to proceed faster with the development of events, by omitting unnecessary detail and taking only three main points : (1) the official part ; (2) the applicant and the public ; and (3) what happened at the Court.

The Government officials concerned, communicated by telephone with their superior officers ; and the air company officials communicated with their lawyer who was away in Kyrenia for the week-end at the time, and was also unwell ; having given such advice as he could do in such circumstances, he made it clear that he would not be available thereafter. The Minister of Interior, who was presiding over an official meeting at Karavas (25 miles from Nicosia) left his Director-General to continue the meeting and set off for Nicosia at 12.15 by car. The Police officers contacted the Acting Commander of the force, who was, apparently, personally directing the operation. In this connection the General Manager of Cyprus Airways described the position in one of his affidavits, as follows :

" After the lapse of considerable time during which there were endless discussions and unsuccessful attempts to persuade me to ask the Captain to carry as passenger Mr. Costas Ioannides (the applicant), Mr. Demetrios Karakoulas told me that there were direct strict instructions from high Government authorities and the Police to the effect that Mr. Costas Ioannides should be carried by the plane. During all that time there was considerable noise and commo-

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tion ; and matters were getting out of control and from bad to worse. At that stage I was handed a letter of indemnity signed by Mr. Karakoulas head of the Migration Department, without whose authority the aeroplane could not leave Nicosia Airport.”

The letter of indemnity in question, a photo-copy of which is attached to Mr. Savvas’ affidavit, reads as follows :

“ *To Whom It May Concern* : This is to certify that Mr. Demetrios Karakoulas after instructions from the Commander of the Police hereby orders Cyprus Airways to proceed with the deportation of Constantinos Ioannides, of Kyrenia, despite the existence of a provisional order issued by the Supreme Court on the 7th November, 1970, which came to the knowledge of the said Mr. Karakoulas and is hereby attached.

(Sgd) D. Karakoulas  
(Migrations Officer)  
*Directions by The Com-  
mander of Police.*

*From The Presidential  
Palace, 12.25 hours  
7.11.1970.”*

This document speaks clearly for itself ; and throws light on the official stand in the matter, at that time. It must be added, however, that the office of the Attorney-General was not consulted at this stage, as stated expressly and emphatically by the Attorney-General, in the course of the proceedings before us.

As regards the applicant and the public, the position was shortly this : At the airport, the passengers who had boarded the plane due to leave at 10.15 a.m., were later returned to the waiting room. The applicant was also there, handcuffed to a policeman and surrounded by a number of Police Officers. His relatives and friends with a number of other people who were taking interest in the matter were watching—with thoughts and feelings upon which I shall not attempt to speculate—this tug-of-war between the officials exercising public authority on the one side and the legal rights of the individual already made *sub judice*, on the other. Fortunately, nothing worse happened. Shortly before one o’clock, the passengers were instructed to return to the plane, the applicant and two police officers included ; and the plane took off for Athens a few minutes after 1 p.m. with about three hours’ delay on its time schedule ; and the applicant aboard.

At the Court the hearing fixed for 12 noon was delayed apparently owing to the happenings at the airport ; and in order to enable counsel for the official side (the respondents) instructed at such a short notice, to prepare for the Court. According to the record the delay was granted at the request of counsel for the respondents, conveyed to the Court through the Registrar. At 12.50 p.m. counsel for both sides appeared before the Judge. Counsel for the applicant stated that his client was at the airport in police custody ; and applied for directions enabling his presence in Court. Counsel for the respondents stated that he had not yet received full instructions, but the provisional order was being opposed ; and he applied for its discharge. The Judge proposed hearing the case on Monday morning (9.11.70) at 11.30 a.m., it being clearly understood that in the meantime the provisional order would remain in force. Mr. Frangos for the respondents applied for a short break to enable him to communicate by telephone for certain further instructions and information. Mr. Karakoulas, the Migration Officer, was with him. The Judge granted a short break. A few minutes later at 1.10 p.m., Mr. Frangos informed the Court that the Migration Officer received a telephone message from the airport that the aeroplane left for Greece, just after 1 p.m., taking the applicant on board. The Judge describing this as a serious development, added that the case would be heard at 11.30 a.m. on Monday, as already arranged. Leaving the Court room counsel for the applicant filed the proceeding now before us, against the respondents herein, for contempt of Court by the conduct of each of the respondents, in disobedience to the provisional order made to ensure applicant's presence in the recourse by which he was challenging the deportation order made by the executive ; and the action taken in connection thereto.

In view of the seriousness of the matter the proceeding was fixed for hearing before the Full Bench, about a week later, on November 17, 1970. In the meantime counsel for the applicant filed a number of affidavits in support of the application ; and counsel for each of the respondents, filed notices of opposition, together with a number of affidavits in support of the opposition.

At the hearing, the Attorney-General of the Republic appeared personally to lead the first stage of the case for the officials involved. At his own request, the Attorney-General made a statement at the opening of the hearing, to the effect that he did not come to know of the contents of the provisional order until after the departure of the

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aeroplane carrying the applicant. He stressed that the Government of the Republic and all its officers, strictly adhered to the principles of the rule of law, which they are duty bound to sustain at all times and in all circumstances. The objection to the provisional order, he explained, was based on legal grounds. Any action which may have been taken in disobedience to the provisional order, should be regarded as a step taken in good faith, in furtherance of the public interest.

At the conclusion of his reassuring statement, the Attorney-General asked that permission be granted to the Minister of the Interior—who is also a lawyer—to declare in open Court his adherence to the rule of law ; and his absolute respect to the Courts of the Republic. The Minister was in Court for the purpose. The Court allowed the Minister to make his statement, which is undoubtedly satisfactory in every respect. Counsel for the applicant observed, however, in this connection, that the case would have to be tried on the practical application and not on the formal declaration of the relevant principles.

Learned counsel for the air company and the Captain of the aeroplane, filed on behalf of his clients, affidavits containing their version of the facts, as seen by these respondents ; and ending with an unqualified apology for any action on their part, which might be found by the Court to amount to disobedience of the provisional order. At an early stage of the proceedings similar apologies were also filed by the other respondents.

The case for the applicant is that pending the hearing of his recourse under Article 146 of the Constitution (challenging the validity of the action taken by state organs for his deportation and incidental detention) a provisional order made by the Court to secure his right of attending the proceedings, was disobeyed in circumstances amounting to contempt of Court ; with the result that the respondents effected the deportation, notwithstanding applicant's contention that being a citizen of the Republic, he cannot be made the subject of a deportation order, in direct violation of Article 14 of the Constitution, which provides that " no citizen shall be banished or excluded from the Republic under any circumstances ". Counsel for the applicant submitted that the conduct of the respondents after they had knowledge of the provisional order, amounted to contempt which the Court had jurisdiction to punish by express provisions in the Constitution under Article 150.

As regards the respondents to the recourse *viz.* the Council of Ministers and the Minister of the Interior, counsel for the applicant conceded that there was no evidence to connect them directly with the action taken in disregard of the provisional order. And, as regards the air company and its officers, counsel for the applicant submitted that the affidavits filed on their behalf together with the apologies, present a position which entitles them to the utmost leniency ; especially the Captain of the aircraft, who showed full respect for the Court order, until developments led him to the belief in the end, that he should accept the applicant on the aeroplane.

Mr. Frangos on behalf of the other respondents to this proceeding, submitted that they were at all times, acting under instructions from superior officers, in execution of orders made under the Aliens and Immigration Law, by a Minister of the Government, believing in all good faith that their duty required them to act as they did. They now realised that they should have reconsidered the position when they came to know of the provisional order ; and regardless of any technicalities which might be invoked for their defence, they filed the affidavits of apology, now found on the record. The Migration Officer was acting in the belief that for the reasons stated in his affidavit, the applicant was an alien ; and that he was being duly deported by order legally made by the appropriate Minister, on behalf of the Government. Even so, when he came to know of the provisional order, he consulted the Acting Commander of the Police, who was in charge of the whole operation under the Minister's orders ; and it was only after such consultation and fresh directions, that he issued the document described as "certificate of indemnity".

The Acting Commander of Police, counsel contended, had express orders from the Minister to carry out the operation as planned, unless the orders were countermanded by the Minister himself. He tried to contact the Minister after he was informed of the provisional order ; but he was unable to do so, as both the Minister and Director-General of the Ministry were away, attending an official meeting at Karavas. When the Minister returned to Nicosia, it was already too late.

The three senior Police officers, counsel contended, were carrying out express and direct orders from their Commander, which they considered it their duty to obey ; and they again consulted the Commander when informed of the provisional order, a Court document of which they

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had no experience. Their full and unqualified apology, now entitled them counsel submitted, to every leniency. And, as to the Sergeant and Police Constable who were all the time acting under the orders of senior officers actually present, at all material times, their contempt, if any, was merely technical.

The position may now be summarised for the purpose of reaching a conclusion.

The applicant, a person born in Cyprus of Greek-Cypriot parentage, acquired in connection with his military education in Greece and service as an officer in the Greek Army, Greek nationality prior to 1960. He came back to Cyprus in 1964, when he was issued a fresh Cyprus passport, or official papers to the same effect. In 1967 when the Greek Military Government ordered their military personnel to return to Greece, the applicant remained in Cyprus in disobedience to orders ; and applied for his discharge from the Greek Army.

In Cyprus he lived in his parental home at Kyrenia ; and worked as a journalist in Nicosia. He got involved in politics ; and after the attempt at the President's life in March last, he was one of the persons arrested on suspicion. He was later charged for complicity and was acquitted after trial by the Assizes on 21st October, 1970.

Some two weeks later he was arrested at his home, for the purposes of a deportation order made against him, under the Aliens and Immigration Law, Cap. 105. After a short consultation with his lawyer, the applicant gave him instructions for the filing of a recourse under Article 146 of the Constitution, challenging the validity of the deportation order. In Police custody under an executive warrant issued for the purposes of the deportation order, the applicant was taken to the airport for embarkation on the next aeroplane for Athens.

In the meantime his advocate filed applicant's recourse in the Supreme Court, challenging the validity of the action taken for his deportation, mainly on the contention that he was a Cypriot citizen of the Republic.

In view of the imminent danger to be taken by force out of the Court's jurisdiction, the applicant through his lawyer applied for a provisional order to protect applicant's right to be present at the proceedings which were of such vital importance to him. The Court granted a provisional

order to prevent applicant's embarkation during the validity of the order, which was made returnable a few hours later, on the same day.

The order was communicated forthwith to the officials of the air company at the airport ; and to the Police and other Government officials concerned with the deportation of the applicant. After consultation between them, the officials involved in the matter, decided to proceed with applicant's embarkation on the aeroplane, in disobedience to the order. With some three hours delay, the aeroplane left Cyprus for Athens with the applicant on board in Police custody. Counsel for the respondents informed the Court during that morning's session, that the applicant was at the time, out of the Court's jurisdiction, on the aeroplane which had left the Island a few minutes earlier. The order remained on the file.

The recourse against the validity of the deportation order was due for a preliminary hearing on 29th December, 1970. Respondents therein are (1) the Council of Ministers and (2) the Minister of the Interior of the Republic who made and signed the deportation order. The Court dealing with the recourse, recommended at the request of counsel for applicant, that applicant's presence at the next hearing might be facilitated. Counsel for the official side (the respondents) stated that Government would do their best to enable applicant's return to the island.

To the contempt proceedings which concern the government officials and the general manager of the Cyprus Airways who acted in disregard or disobedience of the provisional order, the respondents pleaded superior orders, and action taken in good faith ; and they all filed affidavits with full and unqualified apology. The Attorney-General of the Republic appeared personally to reassure this Court of Government's firm adherence to the rule of law.

It is in these circumstances that this Court is now called upon to apply the law in the contempt proceedings, to the facts of this case.

I do not find it necessary to go to any length in re-stating the nature and importance of contempt proceedings. The people of this country have always had full respect for the law ; and to their Courts who declare and apply it. They fully realise that such respect is necessary for the administration of justice ; and they know the importance of justice according to law, for their individual daily lives

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and for the country as a whole. It has been said time and again that the course of justice must not be deflected or interferred with, by any individual or person in authority, whoever he may happen to be. And that “those who strike at it, strike at the very foundations of our society”. To maintain law and order, the Courts have—and must have—power to deal effectively with those who offend against, or impede the course of Justice and the State Courts who administer it. Our Constitution has, very wisely, guaranteed such power.

It has also been stressed from the Bench, both here and in other countries, that this is not so for the sake of the Courts, or the Judges themselves ; but because these are the channels by which justice under the rule of law, reaches the people living in the country. It has been recently and very authentically said in the Court of Appeal in England, that “the sole purpose of proceedings for contempt, is to give the Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented”. (Per Salmon, L.J., in *Morris v. Crown Office* (C.A. [1970] 2 W.L.R. 792 at 801)). I respectfully adopt these statements of the law ; and hold that this is the law in this country also.

I cannot accept the submission that the unqualified and sincere—I have no doubt—apologies filed by the respondents in the contempt proceedings, are sufficient to meet the case. They certainly go far in mitigation ; but they cannot cure the damage done to the legal rights of the applicant which were struck by the contemptuous conduct of the respondents. Those rights which the provisional order was intended to protect ; and which, I believe, must be the centre around which, the sanctions for disobedience should be considered.

I am not inclined to attach undue importance to the evidence regarding alleged statements of disrespect to the provisional order. Even if they are correctly reproduced in the affidavits, they only show that the persons who made them had, by their training, a feeling that acting in disregard of a Court order was wrong ; but their sense of responsibility towards their superiors, had an immediate impact upon them ; and prevailed. This is what, in my view, makes the matter even more serious. These officers knew that in the past, compliance with a Court order was a sufficient answer in all circumstances ; including superior orders. Now, apparently they did not feel that way.

This is why I think that unless we put substance by our decision to the public declarations of adherence and support to the rule of law, such declarations will only be seen by the public as beautiful and expensive dresses worn by dummies in shop windows. No sensible person can mistake nicely dressed dummies for real people.

I, therefore, consider myself as duty bound to give to this case the importance it deserves. And to consider against that background, the case of each of the respondents, according to the merits of his individual conduct. When we announced the Court's verdict on December 4, 1970, we gave the reasons for which the Court discharged for want of any evidence against him, the Minister of Interior (respondent No. 2 in the original recourse). We also gave the reasons for which the Court discharged respondent No. 4 in the application for contempt filed on 7.11.1970 (the captain of the aeroplane); respondents No. 3 and No. 5 in the application filed on 9.11.1970 (a police sergeant and a police constable respectively); and the respondents in the application filed on the 12.11.1970 (the owners of the aircraft).

We also stated that the remaining respondents namely :

1. Demos Zenios, Police Inspector ;
2. Kyriacos Solomonides, Chief Inspector of Police ;
3. Demetris Karakoulas, Migration Officer ;  
(respondents Nos. 1, 2 and 3 in the application filed on 7.11.70)
4. Savvas Antoniou, Acting Commander of Police ;
5. Theodoros Theocharides, Assistant Superintendent ;  
and
6. Evdokios Savva, General Manager of Cyprus Airways Ltd.

(respondents Nos. 1, 2 and 4 in the application filed on 9.11.70) were all found guilty of contempt of Court in that they acted in disregard and disobedience of the provisional order, after it came to their knowledge.

The circumstances in which the provisional order in question was made, on November 7, 1970, to protect the applicant's right to attend the Court proceedings in the recourse challenging his deportation, are sufficiently stated above. The importance of such right, in a State ruled by the law (operating under the rule of law) is so obvious, that it needs no emphasis. The facts and circumstances

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under which the provisional order came to the knowledge of each of the above named respondents, have also been sufficiently stated.

Each of these respondents, misguided by a false sense of duty to the State, or a sense of duty to obey orders from their superiors, acted in disregard and disobedience to the provisional order in the circumstances likewise stated earlier. These need not be repeated. The police officers Zenios ; Solomonides ; and Theocharides (Nos. 1, 2 and 5 above ; an Inspector ; a Chief Inspector ; and a Superintendent, respectively) acted under the orders and directions of the Acting Commander of the Government Police and of the Migration Officer of the State.

The Migration Officer (No. 3 above) acted under the directions of the Acting Commander of the Police given from the Presidential Palace. The Acting Commander (No. 4 above) states in his affidavit that "having not seen the order of the Court and on being informed that it was not addressed against the Police (he) honestly believed that it was (his) duty to obey and carry out the order of (his) superiors which to (his) knowledge had not been revoked or annulled".

The General Manager of the Air Company (No. 6 above) states in his affidavit that "after considerable time and endless discussions" (delaying the flight of an aeroplane) gave way to the pressure exercised upon him by the Migration Officer in person, who told him "that there were direct strict instructions from High Government Authorities and the Police." In fact he was given personally by the Migration Officer the document described as "indemnity certificate" attached to his affidavit which speaks for itself. And it speaks badly enough for itself as to need no comment here.

All these respondents realised, sooner or later, that their respective misguided action after coming to know of the provisional order, amounts to contempt of Court. They all filed affidavits of full apology. There can be no question of their guilt. This Court has unanimously so held. I venture to think that such conduct would be more accurately described as contempt for the law ; or contempt for judicially declared legal rights of another person. The Court merely declares the law ; and the litigants' rights and obligations under the law. The sanctions for treating with contempt another person's legal rights, as declared by State Courts, should, I think, be measured accordingly. The object

of such sanctions should, I think, be to sustain the rule of law and to ensure substantive remedy to the injured individual, in the interest of the community as a whole.

The plea of acting in contempt of the law, under superior orders, is entirely unacceptable. It amounts to placing such orders above the law. And this is completely unacceptable in a State operating under the rule of law. Failure to appreciate the importance of placing the law (and individual rights judicially declared) above executive or other orders described as "superior orders", is a dangerous frame of mind which I do not hesitate to call dangerous ignorance on the part of any person; especially on the part of high ranking public officers. It must be struck down and eliminated before it spreads and destroys. The matter in my view is as simple as that. It is either the rule of law (and respect for individual legal rights judicially declared) or the rule of "superior orders". They cannot co-exist as rulers. They are mutually exclusive.

Any person obeying an illegal order, does so at his own personal peril. No ignorance will be a sufficient excuse for him. Same as ignorance of law cannot excuse illegal conduct. The reason which justifies this legal fiction is obvious. An order to act in disobedience or disregard of a Court order is obviously an illegal order. It is an order to violate a judicially declared legal right of another person. No ignorance can excuse such violation. The injured person is entitled to the appropriate remedy, in vindication of his violated right.

The violated individual right in the instant case, was the applicant's judicially declared right to attend the Court proceedings in his recourse against his deportation from his native country. The importance of the right he claimed, needs no emphasis. We cannot be here concerned with the merits of his recourse. That is for the appropriate Court to find and declare. Here we are only concerned with the violation of his right to attend the proceedings.

This Court, right from the start of the proceedings in hand, treated the matter as one of major importance. The Attorney-General apparently appreciating the position, declared that the Government would do their best to remedy the situation by facilitating applicant's return to the Island for the purposes of his recourse.

Some of the members of this Court felt that such return of the applicant to the Island would go a long way in re-

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medying the situation created by his removal by force, in disobedience of the provisional order ; and that such return would be looked upon as a mitigating factor in considering punishment for the contempt. Other members of the Court took a different view of the matter. But the majority decided to postpone dealing with punishment for the contempt, pending the outcome of the steps taken to facilitate applicant's return ; and the case was adjourned for today.

We were glad to hear in the meantime, that the steps taken for applicant's return were effective ; and the applicant is now in the Island attending the Court proceedings in his recourse which has been partly heard. In view of this development, we have anxiously considered the question of punishment. We all agree that the case calls for a severe punishment. But we do not all attach the same importance to the mitigating factors. Nor do we all agree that imprisonment can be avoided, even in the mitigating circumstances of this case.

After considerable difficulty and discussion, the majority of the Court found it possible to agree in the end that taking all circumstances into account, a sentence of imprisonment can be avoided ; and that an appropriate fine would meet the case. I shall proceed to state my views ; and shall ask the other members of the Court to state theirs.

I hold the view that a sentence of imprisonment should be avoided whenever such a course is possible (See *Panayiotis Mirachis v. The Police* (1965) 2 C.L.R. 28 ; *Polykarpou v. The Police* (1970) 2 C.L.R. 111 at p. 116) ; especially when imprisonment is likely to have such grave and far reaching consequences as in this case. It would here, inevitably, ruin the careers of senior officers of good character and long public service. Why such officers allowed themselves to fall into such a grave error, I am at a loss to understand. But the fact remains that they have fallen ; and their conduct must be met with the punishment which will stop others from falling into the same pit.

In view of applicant's return, I found it possible to bring myself to agree that imprisonment can be avoided for all the six respondents in this case. But the fines to be imposed must reflect the gravity of the offence. If a sentence of imprisonment could be suspended I would have imposed on the five first respondents a suspended sentence of imprisonment. But as doubts have arisen during the discussion of the matter, whether under the existing legislation

such punishment can be imposed by the Courts in Cyprus, I have come to agree to sentences of fine as follows : £150 or two months' imprisonment in default on the two senior officers, namely Demetris Karakoulas, the Migration Officer (No. 3 above) ; and Savvas Antoniou, the Acting Commander of the Police (respondent No. 4 above). They are mainly responsible for the action taken in disobedience of the provisional order. And £75. fine each or one month's imprisonment in default on the three other Police officers, namely Inspector Demos Zenios (respondent No. 1 above) ; Chief Inspector Kyriacos Solomonides (respondent No. 2 above) ; and Assistant Superintendent Theodoros Theocharides (No. 5 above). All fines to be payable within 30 days.

As for the General Manager of the Air Company, Evdokios Savva (respondent No. 6 above) I think that he eventually fell under the pressure of the senior officials (Karakoulas and Antoniou) ; and I think that in view of applicant's return to the Island, and the other mitigating factors in his case, no fine should be imposed upon him. But he should pay his share in the costs.

As to costs, I am of the opinion that in view of the nature of the case and its importance, the applicant is entitled to his costs for two advocates, on the scale applicable to claims between £500 and £2,000. I would make an order against each of the six respondents now before us, for the payment of one sixth of applicant's costs as above, within six weeks from taxation.

TRIANAFYLLIDES, J. : I very much regret that I am unable to agree with the learned President of the Court regarding how five out of the six persons who on the 4th December, 1970, were found guilty of contempt of Court—and to whom I shall refer as "the respondents"—are to be dealt with.

All six respondents, namely the Acting Commander of the Police Savvas Antoniou, Assistant Superintendent of Police Theodoros Theocharides, Chief Inspector of Police Kyriacos Solomonides, Inspector of Police Demos Zenios, the Migration Officer Demetrios Karakoulas and the General Manager of Cyprus Airways Evdokios Savva, have, on oath, expressed their unreserved and deepest regret for committing contempt of Court ; they have declared respect for the Court and obedience to its orders ; and they have asked for mercy on the part of the Court. They are all persons with a clean past.

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I have had to decide whether to imprison straightway the first five respondents—who are all public officers and whose guilt is much greater than that of the sixth respondent—and, thus, punish them severely from now for conduct obstructing the course of justice, through acting in disobedience to a Court order, or whether to take, initially, a rather lenient course and spare them such kind of punishment, for the time being, hoping that their conduct in future will be such as, in the end, to enable me to avoid imposing it on any one of them.

To punish these five respondents by means of fines is a course which, with the utmost respect for the learned President and Judges of the Court who have decided to adopt it, I regard as not being the appropriate one in a case of this nature, because it neither punishes adequately the contumacious conduct of these respondents nor does it, in the alternative, give them a chance to prove that they will honour the sworn and solemn undertakings which they have given to the Court.

This is the first time that such misbehaviour has occurred in Cyprus and I do hope that it is going to be the last one. Moreover, counsel appearing for the litigant (the applicant in recourse No. 344/70), on whose application the respondents were brought before us for contempt of Court, have stressed that they did not wish to see the said five respondents being treated vindictively as scapegoats.

It is an undisputed fact that none of such respondents has acted in contempt of Court for personal motives ; they behaved in a very condemnable manner because due to very rash and confused thinking they regarded themselves bound to carry out order of the Government even after there had been made a Court order to the contrary. They, most unfortunately, lost sight of the fact that their primary duty, both as public officers and citizens, was to the State ; and that though the State is administered by the Government it is ruled by laws which exclude, under any circumstances, obstruction of, or interference with, the administration of justice.

I have, also, taken into account that they have been kept in suspense, worrying about their fate, for about two months, and, furthermore, that in the meantime, the harm done, through their disobedience to a Court order, has been repaired as far as it was possible to do so ; in the sense that such order prevented, until further order of the Court, the deportation of a litigant—the aforesaid applicant—who

has a case before this Court, and that this litigant was, eventually, allowed to return to Cyprus, after he had been deported contrary to the said order.

I reached the conclusion that I should be merciful and place my trust in these five public officers and not impose punishment on them, at present, other than to bind them over, in the sum of £300 each, to come up for judgment if called on to do so within the next twelve months; this means that they would be called on to come up before the Court, if they were to misbehave in a similar manner in the next twelve months, in order to be punished, by terms of imprisonment, for the contempt of Court which they have already committed and for their new misbehaviour; otherwise, if they did nothing to require the adoption of such a course, this unfortunate chapter of their lives would be regarded as closed.

They should, in any event, pay each his share—one sixth—of the costs of the applicant in these proceedings, for two advocates, on the scale for a case with a subject matter between £500—£2,000.

Regarding the sixth respondent, E. Savva, I agree that, in view of his having done his best, initially, in order to avoid obstructing the course of justice and as there is no doubt that, in the end, he was forced by sheer pressure of events to commit contempt of Court, no other order need be made in respect of him except that he should also pay his share—one sixth—of the costs of the applicant, on the same basis as the other five respondents.

Having stated how and why I decided to show mercy to the respondents let me, however, repeat what has been stated recently by Salmon, L.J., in the Court of Appeal in England, in a case of contempt of Court (*Morris and Others v. The Crown Office* [1970] 1 All E.R. 1079, at p. 1087), when binding over to come up for judgment, if called upon, those who committed it, in substitution of sentences of imprisonment of three months which had originally been imposed on them:—

“Everyone has now been warned. If this sort of conduct is repeated by anyone in the future, whatever their motives, no excuse will be accepted, and a sentence of three months’ or even six months’ imprisonment should not, in my view, be regarded as in any way excessive.”

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I shall now proceed to give more fully my reasoning for my judgment and in the process of doing so I shall dwell on some of the salient aspects of this case, starting with a short history of its main events :—

In the morning of the 7th November, 1970, the applicant in the present proceedings, Constantinos Ioannides, filed recourse No. 344/70, under Article 146 of the Constitution, against the decision of the Government of the Republic to deport him from Cyprus. As respondents in the recourse were named “ the Republic of Cyprus through the Council of Ministers and/or the Ministry of Interior ”. But, as pointed out in *Christodoulou and The Republic*, 1 R.S.C.C. 1, the respondent, in a recourse of this nature, is only the Republic, and the two organs through which it was proceeded against are the appropriate organs representing the Republic in the proceedings.

As the applicant had already been arrested and was about to be put on a plane leaving for Athens at 10.15 a.m. that same morning, his counsel applied for a provisional order suspending the execution of the deportation order until the determination of the case or until further order of the Court.

In view of the obvious urgency of the matter and as it was alleged in an affidavit filed in support of the application that the applicant was a citizen of Cyprus—and, thus, his deportation appeared to be contrary to Article 14 of the Constitution—the following provisional order was made at about 9.30 a.m. :—

“ This Court doth order that, until further order, the respondents ”—the Council of Ministers and the Ministry of Interior— “ as well as any other organs, authorities or persons in the Republic acting on the instructions of respondents or otherwise, be and are hereby prohibited and restrained from in any way taking action in order to deport the applicant from Cyprus or from in any way taking part or co-operating in bringing about such deportation.”

This order was made by the Court under rule 13 of the Supreme Constitutional Court Rules, 1962, in exercising the competence of the Supreme Constitutional Court by virtue of the provisions of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64).

It is provided by Article 148 of the Constitution that “ any decision of the Supreme Constitutional Court ”—now this Court—“ on any matter within its jurisdiction

or competence shall be binding on all Courts, organs, authorities and persons in the Republic ” ; and by Article 139(2) of the Constitution it is laid down that “ where any question arises as to the competence of the Supreme Constitutional Court regarding any matter, such question shall be determined by the Supreme Constitutional Court ”.

The matter of the aforementioned provisional order was fixed, for further consideration, at 12 noon of the same day on which it was made (the 7th November, 1970), so that any party affected by it might appear before the Court and object to it ; and, actually, counsel appeared for the Republic and objected to the making of the order. At about 1 p.m., when procedural arrangements were being made in Court for hearing counsel for the parties, regarding such objection, in the morning of the 9th November, 1970 (the 8th November being a Sunday), counsel for the Republic received information, which he communicated to the Court, that, in spite of the provisional order, the applicant had been deported, having been put on a Cyprus Airways plane which had just left for Athens ; it was the plane that was due to leave at 10.15 a.m. but its departure had been delayed due to the refusal of the captain of the plane, as well as of one of the respondents now before the Court, E. Savva, the General Manager of Cyprus Airways to act in a manner contravening the provisional order.

E. Savva, in an affidavit sworn and filed on the 16th November, 1970 (before the hearing on the 17th November, 1970, of this contempt of Court case) explained how the plane left, eventually, with the applicant on board ; he stated the following (in paragraphs 5-10 of such affidavit) :-

“ 5. When Mr. Costas P. Joannides ”—(the applicant)—“ was led handcuffed, by Police Officers ”—(who are now respondents before us)—“ in an attempt to enter the airplane, I fully endorsed the action of the Captain in not allowing them to enter the airplane.

6. After the lapse of considerable time, during which there were endless discussions and unsuccessful attempts to persuade me to ask the Captain to carry as passenger Mr. Costas P. Joannides, Mr. Demetrios Karakoulas ”—(another of the respondents now before the Court)—“ told me that there were direct strict instructions from High Government Authorities and the Police to the effect that Mr. Costas P. Joannides should be carried by the airplane.

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7. During all that time there was considerable noise and commotion and matters were getting out of control and from bad to worse.

8. At that stage I was handed a letter of indemnity signed by Mr. Demetrios Karakoulas, Head of the Immigration Department, without whose authority the airplane could not leave the Nicosia Airport. The said letter of indemnity was signed by Mr. D. Karakoulas on behalf of the Deputy Commander of Police"—(also a respondent now before us)—"A photocopy of the said letter of indemnity is attached hereto marked 'A'.

9. When I got that letter of indemnity I gathered the erroneous impression that I had no further responsibility for the matter which had arisen and I informed the Captain that he can take as passenger Mr. Costas Joannides.

10. I now fully realise that there was no justification on my part in not obeying the order and I assure the Court that I had no intention of committing a contempt of this Honourable Court and I unreservedly express my regret for not obeying the said Order and I do hereby humbly apologize and I throw myself upon the mercy of the Court."

The "letter of indemnity" mentioned, in his affidavit, by E. Savva, reads as follows :—

"Nicosia 7th November, 1970.

#### TO WHOM IT MAY CONCERN

This is to certify that Mr. Demetrios Karakoulas after instructions from the Commander of Police hereby orders Cyprus Airways to proceed with the deportation of Constantinos Ioannides, of Kyrenia, despite the existence of a provisional order issued by the Supreme Court on the 7th November, 1970, and which came to the knowledge of the said Mr. Karakoulas and is hereby attached.

12.25 hours

(Sgd) D. Karakoulas

M.O.

7.11.70.

Directions by the Commander of Police, from the Presidential Palace."

It may be noted here that it is not denied that the person described as the "Commander of Police" is in fact the Deputy Commander of the Police who was at the time the Acting Commander of the Police, respondent S. Antoniou.

Though the Presidential Palace is mentioned in this document there is nothing to show, and it has not even been suggested, that the then Acting President of the Republic (the President of the Republic being abroad at the time) has had anything to do in relation thereto.

Immediately after the deportation of the applicant, counsel appearing for him instituted contempt of Court proceedings. The relevant applications—three of them, each against different respondents—were heard together on the 17th, 18th and 19th November, 1970.

In the meantime, on the 9th November, 1970, at a preliminary stage of the proceedings in the recourse (No. 344/70) of the applicant against his deportation, the Court observed that, in the interests of justice, an endeavour should be made to secure the presence of the applicant in Court, in Cyprus, during the proceedings in the recourse. Counsel appearing for the Republic made a statement, on the 14th November, 1970, to the effect that the Government, in response to the Court's recommendation, had decided to allow the applicant to return and remain in Cyprus so long as it would be necessary for the purposes of his recourse, the hearing of which was fixed to begin on the 4th January, 1970 ; and as a matter of fact the applicant has returned to Cyprus and is now here while his recourse is being heard. Thus, the position now is that which it could have been all along had the provisional order made on the 7th November, 1970, not been disobeyed.

On the 4th December, 1970, prior to the return of the applicant, the Court discharged certain of the respondents in the contempt of Court proceedings, found the remaining six respondents—now before us—guilty of contempt of Court, but it deferred until today its judgment regarding the punishment to be imposed on them, because some of its members felt that the actual return of the applicant to Cyprus would, to a certain extent, redress the consequences of the contemptuous conduct of the said six respondents.

All such respondents have filed affidavits admitting having committed contempt of Court ; E. Savva, the General Manager of Cyprus Airways at the first available opportu-

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nity—on the 16th November, 1970, when he swore an affidavit in reply to the application made against him for contempt of Court—and the other five respondents at a later stage, on the 18th November, 1970, during the second day of the hearing of the relevant applications against them.

S. Antoniou, the Acting Commander of the Police, has stated in his affidavit the following :—

“ 1. I honestly believed that I had no personal responsibility in the matter as I was acting under the instructions of my superiors.

2. I now fully realise that on account of my conduct the course of justice was obstructed.

3. I express my deepest regret for my conduct and I unreservedly express my humble and most sincere apologies and I leave myself at the mercy of the Court.

4. I sincerely and unreservedly declare my respect to the Court and obedience to its orders.”

The other three police officers, Th. Theocharides, K. Solomonides and D. Zenios, have sworn a separate affidavit each, the first paragraph of which reads as follows :—

“ 1. I did not in any way intend to disobey the order of the Court and I honestly believed that I had no personal responsibility in the matter as I was acting under the instructions of my superiors.”

In every other respect the wording of their affidavits is the same as that of S. Antoniou.

D. Karakoulas, the Migration Officer, has sworn an affidavit which is again the same as that of S. Antoniou regarding all its contents except the first paragraph which reads as follows :—

“ 1. I honestly believed that I had no personal responsibility in the matter as I was given instructions by the Acting Chief of Police.”

It is quite clear that the five respondents who are public officers were acting under the influence of the impression that the deportation of the applicant had to be effected on the 7th November, 1970, as ordered by their superiors, even after there was made a Court order preventing such a course for the time being.

There can be no doubt that such an impression was an utterly erroneous one :

As stated in “ The Law of the Constitution ”, by Pro-

fessor Dicey, 10th ed. (1960), at p. 286, there is "a doctrine which pervades English Law, that no one can plead the command of a superior, were it the order of the Crown itself, in defence of conduct otherwise not justified by law."

This is a statement of a general principle applicable in all countries which are governed under the Rule of Law (see, also, in this respect, the text-book of Professor Kyriacopoulos on Greek Administrative Law, 4th ed., volume III, p. 216).

Being, on that fateful morning of the 7th November, 1970, in a state of outburst of excessive zeal to execute in any event the orders of their superiors regarding the immediate deportation of the applicant, the five respondents who are public officers seem to have lost completely sight of the basic canon that Court orders must be obeyed by each and everyone.

In *Seaward v. Paterson* [1897] 1 Ch. 545, Lindley, L.J., stressed in his judgment that:—

"It has always been familiar doctrine to my brother Rigby"—Rigby, L.J.—"and myself that the orders of the Court ought to be obeyed, and could not be set at naught and violated by any member of the public, either by interfering with the officers of the Court, or by assisting those who are bound by its orders."

Anybody acting in disregard of the doctrine referred to by Lindley, L.J., in the *Seaward* case (*supra*) renders himself liable to be punished for contempt of Court.

The power of this Court to punish for contempt in a case such as the present one is derived from Article 150 of the Constitution which provides that:—

"The Supreme Constitutional Court"—now this Court—"shall have jurisdiction to punish for contempt of itself."

In English law contempts of Court are classified, depending on the circumstances, as criminal contempts and as contempts in procedure (see Halsbury's Laws of England, 3rd ed., vol. 8, p. 2, para. 1). If in the present instance such a distinction had to be drawn I would be inclined to take the view, bearing in mind all relevant considerations and in the light of *Scott v. Scott* [1913] A.C. 417 (see particularly the judgment of Lord Atkinson at p. 458), that this is a case of contempt in procedure. In any event, there

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is no doubt that Article 150 of the Constitution applies to both categories of contempts, in the same way in which it is quite clear that it confers jurisdiction to punish both for contempt committed "in the face of the Court" (as was the situation in the *Morris* case, *supra*, where Court proceedings were disrupted by demonstrators who invaded the courtroom) and for contempt committed through disobedience to a Court order (as is the situation in the present case).

Whatever may be the nature of the contempt the punishment to be imposed should be such as is found to be required in the light of the circumstances of the particular case. As stated by Mathew, J., in *In re Maria Annie Davies*, 21 Q.B.D. 236 (at p. 238) :—

"The punishment should be commensurate with the offence. It may be severe where the contempt is grave : as for instance in the rare cases where an insult is offered in Court to the Judge who presides, or where a deliberate attempt is made to interfere with the due and ordinary methods of carrying out the law."

This dictum was approved in *Attorney-General v. James and Others* [1962] 2 Q.B. 637 (see the judgment of Lord Parker, C.J., at p. 641).

In assessing punishment for contempt of Court it must be borne in mind that the object of the relevant proceedings is not to re-establish the injured dignity of those administering justice but to safeguard, for the sake of the public, the administration of justice.

In *Helmores v. Smith* (2) 35 Ch. D. 449, Bowen, L. J., had this to say on such matter (at p. 455) :—

"The object of the discipline enforced by the Court in case of contempt of Court is not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice."

In *Rex v. Davies* [1906] 1 K. B. 32, Wills, J., approved of the above dictum of Bowen, L. J., and said (at p. 40) :—

"What then is the principle which is the root of and underlies the cases in which persons have been punished for attacks upon Courts and interferences with the due execution of their orders? It will be found to be, not the purpose of protecting either the Court

as a whole or the individual Judges of the Court from a repetition of them, but of protecting the public, and especially those who, either voluntarily or by compulsion, are subject to its jurisdiction, from the mischief they will incur if the authority of the tribunal be undermined or impaired."

Later on in his judgment in that case Wills, J., proceeded to refer to a judgment prepared by Wilmot, C.J., in *Rex v. Almon* (1765), in which there was stated, *inter alia*, that the real offence, in a contempt of Court case, is the wrong done to the public by weakening the authority and influence of a tribunal which exists for their good alone, and, further, that redress, in such a case, was necessary "not for the sake of the Judges as private individuals, but because they are the channels by which the King's justice is conveyed to the people."

In the case of *Morris (supra)* Davies, L.J., (at p. 1084) approved the aforesaid approach to a matter of this nature by Wills, J., in *Rex v. Davies (supra)*. Also, Salmon, L.J., in the *Morris* case had this to say (at p. 1087) :—

"The archaic description of these proceedings as 'contempt of Court' is in my view unfortunate and misleading. It suggests that they are designed to buttress the dignity of the Judges and to protect them from insult. Nothing could be further from the truth. No such protection is needed. The sole purpose of proceedings for contempt is to give our Courts the power effectively to protect the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented (*Skipworth's Case* [1873] L.R. 9 Q.B. 230 and *R. v. Davies* [1906] 1 K.B. 32)."

It is in the light of all the foregoing that I have considered the question of how to deal with the respondents in this case ; and I must state, in this respect, that it is rather unfortunate that there exists no provision in Cyprus, such as that existing in Greece, enabling the imposition of suspended sentences of imprisonment ; in this connection section 100 (1) of the Greek Criminal Code ('Ελληνικός Ποινικός Κώδιξ) provides that :—

"Ἡ ἀναστολή τῆς ἐκτελέσεως δύναται νὰ χορηγηθῆ, ἐὰν ἐκ τῆς ἐρεῦνης τῶν περιστάσεων, ὑφ' ἧς ἐτελέσθη ἡ πρᾶξις, ἴδια δὲ τῶν αἰτίων αὐτῆς, τοῦ προηγουμένου βίου καὶ τοῦ χαρακτῆρος τοῦ καταδικασθέντος, τὸ δικαστήριον κρίνῃ ὅτι ἡ ἐκτέλεσις τῆς ποινῆς δὲν εἶναι ἀναγκαία, ἵνα ἀποτρέψῃ

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τοῦτον ἀπὸ τῆς τελέσεως ἄλλων ἀξιοποίνων πράξεων. Ἐν τῇ κρίσει του δὲ ταύτη τὸ δικαστήριον δέον προσέτι νὰ λαμβάνη ὑπ' ὄψιν καὶ τὴν μετὰ τὴν πράξιν διαγωγὴν τοῦ ὑπαίτιου, ἰδίως δὲ τὴν ἐπιδειχθεῖσαν μετάνοιαν καὶ τὴν προθυμίαν πρὸς ἐπανόρθωσιν τῶν συνεπειῶν αὐτῆς.”

(“The suspension of the effect of the sentence may be granted if, after examining the circumstances in which the act has been committed, and particularly its causes, the past record and character of the convicted person the Court reaches the conclusion that giving effect to the sentence is not necessary in order to deter him from committing other punishable acts. In reaching such a conclusion the Court should take into account also the conduct of the culprit after the act, and particularly any repentance shown and willingness to redress its consequences).”

Had such a useful provision been in force in Cyprus it would have been open to me to consider whether to sentence the five respondents who are public officers to suspended short terms of imprisonment ; as a matter of fact there do exist in this case—as it would appear from a perusal of this judgment—most of the aforementioned elements, in section 100 (1) of the Greek Penal Code, which would justify suspending the effect of a sentence of imprisonment.

In the absence of such a possibility, and neither being prepared to sentence these respondents to prison straightway without suspending their sentences nor being of the view that fines are the appropriate sentences, I decided to resort, in respect of such respondents, to the nature of the suspended sentences which were imposed by the Court of Appeal in England in the *Morris* case, *supra*—(once such Court had held that the provisions of section 39 of the Criminal Justice Act 1967, regarding the suspending of sentences, did not apply to the case with which it was dealing)—namely to bind the said respondents to come up for judgment if called on to do so within the next twelve months.

It is very useful to note how Denning M.R. in the *Morris* case described (at p. 1083) the nature of a suspended sentence in the form of a binding over to come up for judgment if called on to do so ; he stated :—

“The powers at common law remain intact. It is a power to fine or imprison, to give an immediate sentence or to postpone it, to commit to prison pending his consideration of the sentence, to bind over to be

of good behaviour and keep the peace, and to bind over to come up for judgment if called on. These powers enable the Judge to give what is, in effect, a suspended sentence. I have often heard a Judge say at common law, for ordinary offences, before these modern statutes were passed: 'I will bind you over to come up for judgment if called on to do so. Mark you, if you do get into trouble again, you will then be sentenced for this offence. I will make a note that it deserves six months' imprisonment. So that is what you may get if you do not accept this chance.' That is the common law way of giving a suspended sentence. It can be done also for contempt of Court."

I have, indeed, duly borne in mind, all along, that the facts of the *Morris* case (*supra*) were different from those of the present one. I would, however, point out that the persons involved in that case, unlike the respondents now before us, refused, till the end, to apologize for the contempt of Court which they had committed and all three members of the Court of Appeal thought that such contempt was of a very serious nature and that the sentences of three months' imprisonment imposed, in the first instance, were not really excessive; yet, once they decided to be merciful, they did not hesitate to resort to binding over the culprits to come up for judgment if called on to do so; and it is quite interesting to note that there were not imposed fines, instead, by way of sentences lighter than imprisonment.

Thus, in the present case, being of the view, for the reasons which I have already explained, that there exist grounds justifying the course of being merciful to the five respondents who are public officers, I have not been able to agree that fines should be imposed on them—because I think that fines are not appropriate sentences in the particular circumstances of this case—and I decided to bind them over to come up for judgment if called on within the next twelve months, should such a course be rendered necessary by their future conduct. Such decision of mine should not, in the least, be misunderstood by the said respondents, or anybody else, as minimizing the gravity of their misbehaviour; it has been mercifully intended to afford them an opportunity of showing that their repentance is a genuine one; and if I were to be proved wrong in treating them as sincere in this respect, then let there be no doubt that I would call on them to come up for judgment in order to be punished—for the contempt of Court committed by them on the 7th November, 1970—with all due severity.

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JOSEPHIDES, J. : Before I deal with the merits of the case I think I ought to refer to the law applicable in contempt proceedings.

The power to punish for contempt of Court is conferred on this Court under the provisions of Articles 150 and 162 of the Constitution and section 42 of the Courts of Justice Law, 1960.

The expression contempt of Court has been a recognized phrase in English law since the twelfth century. Contempt, being a growth of the common law, has no one authoritative definition or limitation ; nor has it even been possible satisfactorily to classify the different kinds of contempt. The definition of contempt of Court given in Oswald's Contempt of Court (1910), third edition, page 6, is as follows : "To speak generally, contempt of Court may be said to be constituted by any conduct that tends to bring the authority and administration of the law into disrespect or disregard, or to interfere with or prejudice parties litigant or their witnesses during the litigation".

The most common form of classification in England is into (a) the so-called "civil" contempts, or "contempts in procedure" ; and (b) the so-called "criminal" contempts. The chief instance of civil contempt (or contempt in procedure) is disobedience to an order of the Court by a party to the proceedings ; the chief instances of criminal contempt are contempt *in facie curiae* by any person (e.g. by hurling abuse or an object at the Court) and conduct obstructing or calculated to prejudice the due administration of justice (see The Supreme Court Practice 1970, volume 1, page 713, paragraph 52/1/2).

Order 52, rule 1, of the English Rules of the Supreme Court 1965, terminates a long and unfortunate history, in the course of which distinctions developed and multiplied in the decisions of the Courts and in the rules, and contempt of Court was punishable in some circumstances by attachment and in others by committal. The sole distinction that survives today in England is between "criminal" and "civil" contempt. The chief importance of this distinction lay in the difference in the right of appeal, but this has been removed by section 13 of the Administration of Justice Act, 1960, which gives the same right of appeal whether the contempt be criminal or civil. A further difference which no longer exists, was that for a criminal contempt imprisonment should be for a fixed term, and the Court had no jurisdiction to discharge the

prisoner before its expiry : See The Supreme Court Practice 1970, volume 1, page 712, paragraphs 52/1/1 and 52/1/2. In the same volume a summary of the types of civil and criminal contempt is given at page 713, paragraph 52/1/4 *et seq.* At page 715, paragraph 52/1/7, acts calculated to prejudice the due course of justice are classified as criminal contempt, and one of the cases referred to is that of *Seaward v. Paterson* [1897] 1 Ch. 545, C.A. in which it was held that a third person aiding a party to flout an injunction may be guilty of contempt.

It was submitted on behalf of the *ex parte* respondents in the present case that the acts committed by them amount to "civil" contempt or "contempt in procedure", and reference was made to Halsbury's Laws, of England, third edition, volume 8, page 20, paragraph 37 and to the speech of Lord Atkinson in *Scott v. Scott* [1913] A.C. 417, at page 455 *et seq.*; [1911-13] All E.R. Rep. 1, at page 19, in which he analyses and comments on Lindley, L.J.'s judgment in *Seaward's case (supra)*, at page 555. It was further submitted that this was a case of a contempt in theory only or a technical infringement of a Court order.

In Oswald's Contempt of Court, quoted above, at page 106, it is stated that "a stranger to an action who aids and abets the breach of a prohibitory order obstructs the course of justice, and his contempt is punishable by committal or attachment. The punishment is inflicted, not for a technical infringement of the order, but for aiding and abetting others in setting the Court at defiance, and thus, while obedience to the order is enforceable merely by civil process, such conduct on the part of a stranger to the action is a contempt of a *criminal* nature". Some of the cases given in support of that proposition are *Seaward v. Paterson (supra)*; *Lord Wellesley v. Earl of Mornington* [1848] 11 Beav. 180; and *O'Shea v. O'Shea, Ex parte Tuohy* [1890] 15 P.D. 59, C.A.

In the case of *O'Shea*, one James Tuohy had published in a newspaper an article commenting on the conduct of Captain O'Shea, the petitioner in a divorce action against his wife for dissolution of marriage on account of her alleged adultery with Parnell. Tuohy was fined £100, and he appealed to the Court of Appeal. The question was whether the matter was a criminal matter in respect of which there could be no appeal by reason of section 47 of the Judicature Act, 1873. It was held that an application by a party to a civil action for an attachment against a person not a party to the action, for contempt of Court in the publication of

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comments calculated to prejudice the fair trial of the action, was a “criminal cause or matter” within the meaning of section 47 of the Judicature Act, 1873, and that no appeal from an order made upon such an application could be brought to the Court of Appeal. In the course of his judgment, Cotton, L.J., said, at page 63, that what gives the Court the power to act is the fact that “the appellant has done something to prevent the course of justice by preventing the divorce suit from being properly tried. That is clearly a contempt of Court of a criminal nature”; and further down the learned Justice says “in the present case the whole proceeding is to punish the appellant for a wrong which he has done, not to obtain the doing of anything for the petitioner’s benefit in the action in the Divorce Division” (page 63). Lindley, L.J., in the same case says, at page 64, “The offence of the appellant is certainly a criminal offence”; and further down he gives warning that “we must not, therefore, be misled by the words ‘contempt’ and attachment, but we must look at the substance of the thing. In the present case I have no doubt that the proceeding is a summary conviction for a criminal offence, and therefore no appeal lies”.

Finally Lopes, L.J., at page 65 of *O’Shea’s* case, says that one kind of attachment for contempt is—

“to enforce obedience to an order made in a civil action or proceeding, *against one of the parties*, in respect of something the doing or not doing of which is not a criminal act. That would not be an order in a ‘criminal cause or matter’ within section 47. But there is another kind of attachment which is the subject of an independent application against a person who is not a party to the suit in respect of an act done outside the suit, and which act is criminal. That, I think, is within the words of section 47. The application on which the present order was made was an application by the petitioner in the divorce action, in reference to an attempt made by a stranger to the suit to interfere with the administration of justice in the action, but it is made outside the action. The object of the application was to obtain the punishment of the appellant, and the proceeding ended with the order against him. I am clearly of opinion that this order was made in a criminal matter.”

In *Seaward v. Paterson* [1897] 1 Ch. 545, it was held that there is a clear distinction between a motion to commit a man for breach of an injunction on the ground that he

was bound by the injunction, and a motion to commit a man on the ground that he has aided and abetted a defendant in a breach of an injunction. In the first case, the order is made to enable the plaintiff to get his rights ; in the second, because it is not for the public benefit that the course of justice should be obstructed. It was further held that the Court has undoubted jurisdiction to commit for contempt a person not included in an injunction or a party to the action who, knowing of the injunction, aids and abets a defendant in committing a breach of it. In this connection it would be helpful to compare the provisions of section 121 (c) of our Criminal Code, Cap. 154, which provides that any person commits a misdemeanour who "obstructs or in any way interferes with or knowingly prevents the execution of any legal process, civil or criminal". The expression "legal process", includes a process issuing from a Court of justice such as attachment, execution, injunction, etc.

Reverting to *Seaward's* case, the facts were that the plaintiffs alleged that Paterson, the sole defendant in the action, had disobeyed an order not to cause any nuisance by permitting boxing matches upon his premises ; that Sheppard and Murray had assisted the defendant in disobeying it ; and they (the plaintiffs) moved that the defendant and the other two persons, who were described in the notice of motion as the "agents or servants" of the defendant, might be committed to prison, for their contempt in having disobeyed, and aided and assisted in disobeying, the order of the Court. North, J., held that Sheppard had taken part in the disobedience as the servant of the defendant or of Murray, and that Murray had knowingly assisted the defendant in disobeying the order. All three respondents were committed to prison : Sheppard for a fortnight and the other two for a month each. On appeal, Lindley, L.J., at page 554, said :

"Now, let us consider what jurisdiction the Court has to make an order against Murray. There is no injunction against him—he is no more bound by the injunction granted against Paterson than any other member of the public. He is bound, like other members of the public, not to interfere with, and not to obstruct, the course of justice ; and the case, if any, made against him must be this—not that he has technically infringed the injunction, which was not granted against him in any sense of the word, but that he has been aiding and abetting others in setting the Court at defiance, and deliberately treating the order of the Court as

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unworthy of notice. If he has so conducted himself, it is perfectly idle to say that there is no jurisdiction to attach him for contempt as distinguished from a breach of the injunction, which has a technical meaning.”

The case of *Lord Wellesley v. Earl of Mornington* [1848] 11 Beav. 180, was relied upon in Seaward's case. *Lord Wellesley's* case is a clear decision that a person who knowingly assists another who is restrained by an injunction in doing acts in breach of the injunction is liable to committal for contempt, although the order for an injunction was made in an action to which he was not a party.

I next come to the case of *Scott v. Scott* [1913] A.C. 417, H.L. In that case an order was made at the instance of the petitioner in a nullity suit, which was practically undefended, for the hearing of the cause in camera. After a decree *nisi* had been pronounced the petitioner, through her solicitor, obtained a transcript of the official shorthand writer's notes of the proceedings at the hearing of the cause and sent copies of this transcript to the respondent's (her husband's) father, sister and to a lady friend of hers. Upon a motion by the respondent to commit for contempt of Court the petitioner and her solicitor for publishing copies of this transcript, they were both found guilty of contempt and ordered to pay the costs of the motion. On appeal to the House of Lords it was, *inter alia*, held that the order to hear in camera was made without jurisdiction; and that the order to pay costs was not a judgment in a “criminal cause or matter” within section 47 of the Judicature Act, 1873, so that no appeal would lie from it. It was in the course of his speech that Lord Atkinson, one of the five Law Lords, referred to *Seaward v. Paterson*, he analysed Lindley, L.J.'s judgment in *Seaward's* case (at page 555), and expressed the view that the learned Judge did not regard Murray's conduct in *Seaward's* case as a criminal contempt (see *Scott's* report, at pages 457 to 459).

In 1948 Lord Uthwatt in the course of his speech in the House of Lords in *Marengo v. Daily Sketch and Sunday Graphic Ltd.* [1948] 1 All E.R. 406, had occasion to refer to *Seaward v. Paterson* and to reiterate what was laid down in the latter case. The *Marengo* case was an action for passing off brought against a limited company in which the plaintiff was granted an injunction restraining “the defendants their staff, servants and agents” from doing the prohibited acts. It was held by the House of Lords that since it was only the defendants who were before the Court, and not their staff, servants, and agents, the form of the order

was open to objection as its language suggested that a direct order had been made against the staff, servants and agents, which was not the intention of the order. It was not necessary to refer to the staff, servants, and agents at all, but it was desirable, as the defendants were a limited company and could only act through others, that the injunction should take the form of restraining "the defendants by their servants, workmen, agents or otherwise" from committing the prohibited acts.

In the course of his judgment Lord Uthwatt (with whom the other noble Lords agreed), at page 407, said "the proposed inclusion (of the staff, servants and agents of the defendants) was desired, as I understand it, in order that the staff as such should be restrained from committing the acts prohibited to the defendants. That is obviously wrong. The reference to servants, workmen, and agents in the common form has not the result that those persons are enjoined, for, as Lord Eldon, L.C., pointed out (7 Ves. 256) in *Iveson v. Harris*, it was not competent to the Court: 'To hold a man bound by an injunction, who is not a party in the cause for the purpose of the cause' ". And the noble Lord went on to say that the reference to servants, workmen and agents in the common form was nothing other than a warning against wrongdoing to those persons who may by reason of their situation be thought easily to fall into the error of implicating themselves in a breach of the injunction by the defendant. There its operation ends. Finally, Lord Uthwatt analyses the position as follows:—

"If they knowingly assist the defendant in a breach by him of the injunction, they may be committed for contempt of Court, not because they have broken the injunction—they have not done so—but because they have so conducted themselves as to obstruct the course of justice in assisting a breach and tried to set process of the Court at naught. In that respect they stand in no different position from a complete stranger who knowingly sets out to assist the defendant in committing a breach. The position of a stranger who assists a defendant in committing a breach of an injunction was dealt with by North, J., and the Court of Appeal in *Seaward v. Paterson* and need not be elaborated. I would, however, observe that North, J., had in that case to consider whether one Sheppard should not also be committed for contempt. Without pausing to decide whether Sheppard was or was not a servant of the person enjoined—he said

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that was immaterial—North, J., ordered his committal on the ground that he had knowingly assisted in a breach of the injunction by the defendant.”

*Seaward's* case was recently considered in *Elliot v. Klinger & Others* [1967] 3 All E.R. 141, Ch. D. It was held in that case by Stamp, J., that the injunction sought against two companies (which were not parties to the action, to restrain them from paying away certain monies etc.) would not be granted because the plaintiff already had a remedy against the respondent companies for aiding and abetting a breach of the defendants' undertakings, *viz.* a remedy by proceedings of contempt of Court, whether the respondent companies were or were not parties to the action, on the basis of *Seaward's* case.

To complete the picture, reference should also be made to three recent English cases concerning the breach of an injunction or order by a defendant or a party to the cause, though I do not think that they alter the legal position as regards the law laid down in *Seaward's* case. The first is that of *Yianni v. Yianni* [1966] 1 W.L.R. 120, Ch. That was a case of a breach by the defendant of an injunction whereby he was restrained from collecting rents. Cross, J., in the course of his judgment held that it was a civil contempt which had a “quasi-criminal aspect” and that the Court had power to issue and serve subpoenas on witnesses of its own motion. In *In re Bramblevale Ltd.* [1970] 1 Ch. 128, C.A., an order had been made by a Registrar of the Court in a company winding-up for the production of the company's books to the liquidator for inspection, and the order was disobeyed by the managing director (respondent). A summons was then taken out by the liquidator to commit the respondent to prison for contempt of Court. It was held by the Court of Appeal that “where a person was charged with contempt of Court, which was an offence of a *criminal* nature involving the liberty of the subject, his guilt must be proved beyond reasonable doubt.” Lord Denning, M.R., in the course of his judgment, at page 137, said: “A contempt of Court is an offence of a *criminal* nature. A man may be sent to *prison* for it. It must be satisfactorily proved. To use the time-honoured phrase, it must be proved beyond reasonable doubt. It is not proved by showing that when the man was asked about it he told lies. There must be some further evidence to incriminate him”.

Finally, we have the recent case of *Comet Products U.K. Ltd. v. Hawhex Plastics Ltd. & Another*, reported in “The

Times", December 9, 1970. In that case an interim injunction had been made against *the defendants* (the company and Mr. Hawkins, its chairman and managing director) restraining them from passing off their hair trimmer and, subsequently, an application for a writ of sequestration against the company and for the committal to prison of Mr. Hawkins for contempt of the Judge's order was made. The question raised in that case was whether Mr. Hawkins, who was one of the defendants, could be cross-examined on his affidavit filed in the contempt proceedings. The Court of Appeal held that it would not be appropriate to allow the proposed cross-examination for what was "in effect a criminal charge", and as a matter of discretion it should not be allowed, as it went too wide. In the course of his judgment, Lord Denning, M.R., said :

"Mr. Sparrow had gone so far as to say that in proceedings for contempt of a civil nature as opposed to a criminal contempt a defendant could be compelled to give evidence even against himself, and that he was a compellable witness. Everyone knew the difference. Criminal contempt usually took place in the face of the Court or where it might prejudice a fair trial. Such a case was that of the Welsh student (*The Times*, February 12 [1970] 2 Q.B. 114).

But the present case was a civil contempt, a typical instance being disobedience to an order made by the Court in a civil action. Nevertheless, it partook of the nature of a criminal charge, particularly because the defendant was liable to be punished by going to prison : and the rules about criminal charges had been universally applied to such proceedings, as Mr. Justice Cross had decided in *Yianni v. Yianni* [1966] 1 W.L.R. 120 ; and the Court of Appeal had said in *In re Bramblevale Ltd.* ([1970] Ch. 128) that the contempt must be proved with the same degree of satisfaction as a criminal charge."

It will be observed that the *Comet Products* case was a case of disobedience to an order by a *defendant* in a civil action, and not a case of persons who were not parties to the cause who aided and abetted others in committing a breach of an injunction. Although the above case is referred to as a typical instance of a "civil" contempt, being disobedience by a *defendant* to an order made by the Court in the action, nevertheless Lord Denning says that "it partook of the nature of a *criminal* charge, particularly because the defendant was liable to be punished by going

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to *prison*". Strange as it may sound, in England the sole punishment for "civil" contempt is imprisonment, except that in the case of a mere unintentional disobedience to a Court order the respondent may be ordered to pay the costs of the application only (see 8 Halsbury's Laws, third edition, pages 20 and 25, paragraphs 37 and 46; and "Contempt of Court" (1959), page 23—a report by "Justice" under the chairmanship of Lord Shawcross, P.C., Q.C.).

Finally, the law which is applicable to the present case is, I think, summarised in Halsbury's *Laws of England*, 3rd edition, volume 8 at pages 20–21, paragraphs 38–39 :—

"38. *Where misconduct involved.* In circumstances involving misconduct, contempt in procedure bears a two-fold character, implying as between the parties to the proceedings merely a right to exercise and a liability to submit to a form of civil execution, but as between the party in default and the State, a penal or disciplinary jurisdiction to be exercised by the Court in the public interest. Misconduct of this kind consists in disobedience to such orders for the payment of money as are excepted from the general provisions of the Debtors Act, 1869, abolishing imprisonment for debt, or in wilful disobedience to any order or process, or in the breach of an undertaking given to the Court.

39. *Strangers to actions.* A stranger to an action who aids and abets the breach of a prohibitory order obstructs the course of justice, and this contempt is punishable by committal or attachment. The punishment is inflicted, not for a technical infringement of the order, but for aiding and abetting others in setting the Court at defiance.

It is a contempt to indemnify a person against the consequences of committing contempt."

To sum up, in England the distinction between "civil" and "criminal" contempt was made for procedural reasons, mainly with regard to the right of appeal prior to 1960. Whatever the position may be in England with regard to this classification, in Cyprus we have our constitutional and statutory provisions which make no distinction but empower the Court to punish for contempt generally. Consequently, I do not think that it matters whether the label to be attached to the contempt in Cyprus is that of a civil or a criminal contempt. What the Court must have regard to is the substance of the case.

In the present case the provisional order is civil process but the contempt by the *ex parte* respondents, who are not parties to the cause (the recourse), involves misconduct calling for the exercise of a punitive or disciplinary jurisdiction under the provisions of Articles 150 and 162 of the Constitution which empower this Court "to punish for contempt of itself". It can do so by imposing a fine or imprisonment or sequestration (cf. section 42 of Law 14 of 1960). The *ex parte* respondents in this case are guilty of contempt in that they aided and abetted the breach of a prohibitory order and thus obstructed the course of justice and rendered themselves liable to be punished.

I would leave the question open whether the provisions of section 42 of the Courts of Justice Law, 1960, apply only in the case of a disobedience to an order by a party to the cause or generally.

Needless to say that an order of Court even if irregularly obtained cannot be treated as a nullity, but must be implicitly obeyed until by a proper application it is discharged, and the case is the same where the order is alleged to have been improvidently made (see the cases quoted in support of this proposition in Oswald's Contempt of Court, at page 107 :

*Woodward v. King* [1674] 2 Ch. Cas. 203, s.n. *Woodward v. Earl Lincoln*, 3 Swan. 626 ; *Drewry v. Thacker* [1819] 3 Swan. 529, at p. 546 ; *Fennings v. Humphrey* [1841] 4 Beav. 1 ; *Blake v. Blake* [1844] 7 Beav. 514 ; *Chuck v. Cremer* [1846] 2 Ph. 113 ; *Russell v. East Anglian Railway Co.* [1850] 3 Mac. & G. 104 ; and see *In re Wilde* (a solicitor) [1910] 1 Ch. 100 ; and *In re Battersby's Estate* [1892] 31 L.R. Ir. 73).

In dealing with the question of punishment all the facts and circumstances of the case and the nature of the contempt charged must be taken into consideration ; however, the Court generally in practice leans to the side of mercy (Oswald on Contempt, page 238).

As Lindley, L.J., said in *Seaward v. Paterson* [1897] 1 Ch. 545 at page 553, "The Court ought to be very chary in committing people for contempt, particularly in cases of fanciful contempt. The Court, unless it is to become useless, must deal with such questions in the interests of the public, bearing in mind that the greater the power it possesses the more caution it is necessary to use in exercising it".

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In assessing punishment in the present case, apart from the particular facts in respect of each respondent, I think we ought to take into account generally the following mitigating circumstances in respect of all respondents :

- (a) that there was some uncertainty as to the law regarding persons who were not parties to a cause in which an injunction had been issued against parties to the cause. No Cyprus precedent has been cited to us and, so far as I am aware, there is no case on this point in our law reports. We do not seem to have any case where either strangers or servants aided and abetted the breach of an injunction by a party to the cause. This uncertainty in the minds of the present respondents appears from their statements when the provisional order was brought to their knowledge. Their reaction was that they were not parties to the cause so they were not bound by the order. Naturally, this is not a defence or an excuse but I would be prepared to take this into account to some extent in assessing punishment ;
- (b) the statement made by the Attorney-General of the Republic at the opening of the present case, including the arrangements made for the return of the applicant ;
- (c) the unqualified apologies filed on behalf of all the respondents ;
- (d) the submission made by applicant's counsel for utmost lenience and that the respondents should not be made scapegoats ;
- (e) the unblemished character and personal circumstances of the respondents.

I shall first consider the case against Mr. Evdokios Savva, who is the General Manager of Cyprus Airways Ltd. In doing so I take into account the following matters :

- (i) his unqualified apology to Court at the earliest opportunity ;
- (ii) the fact that on being handed a copy of the order at about 11 a.m. he immediately sought legal advice ; that he tried his best to obey and give effect to the Court order and that he fully endorsed the action of Captain Ecob in not allowing the police party to board the applicant on the aircraft shortly after 11 a.m. ;

- (iii) that subsequently he was told by Mr. Karakoulas, the Migration Officer, that there were "direct strict instructions from High Government Authorities and the Police" to the effect that the applicant should be carried by the aircraft; and that eventually at 12.25 p.m. he was handed a directive by Mr. Karakoulas (which document in these proceedings was described as a "letter of indemnity") "ordering" Cyprus Airways, "after instructions from the Commander of Police", to proceed with the deportation of the applicant despite the existence of the Court Order. In his apology Mr. Evdokios Savva states that on being handed this order he gathered the erroneous impression that he had no further responsibility for the matter which had arisen and he then informed the Captain of the aircraft that he could take applicant as a passenger;
- (iv), that subsequently to receiving this order from Mr. Karakoulas it was not possible for Mr. E. Savva to communicate with his legal advisers, and that, as stated in his apology, he now fully realised that there was no justification for him to disobey the order of the Court and he unreservedly expressed his regret; and
- (v) that counsel for the applicant, in their submission to Court, stated that Mr. E. Savva acted properly and that the apology filed by him might be sufficient in the circumstances.

Taking all these circumstances into consideration I am inclined to the view that Mr. E. Savva was labouring under a misapprehension that he was covered by the order given to him by the Migration Officer of the Republic, and that he did his best in the circumstances to obey the Court Order. For these reasons I think that the apology filed by him in addition to the payment of his share in the costs would meet the present case.

The case, however, with regard to Mr. Karakoulas the Migration Officer, Mr. Antoniou, the Acting Commander of Police, and the three other police officers (Inspector Zenios, Chief Inspector Solomonides and Assistant Superintendent Theocharides) stands on a different footing. In their apologies to the Court they all pleaded that they were performing their duty under superior orders. It is true that, in the execution of his office, a police officer is required to obey the orders of his superiors in the Force but such orders

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must be "lawful" orders and not orders which involve a breach of the law (cf. section 17 of the Police Law, Cap. 285); and it is well settled that all persons in the Republic, including police officers and public officers, are bound to obey an order made by a Court of competent jurisdiction, irrespective of superior orders. If there is complaint against a Court Order, the proper course would be for a police officer or public officer to obey the order in the first instance and then apply to the Court to have it discharged (see earlier in this judgment).

With regard to Mr. Karakoulas and Mr. Antoniou, counsel for the applicant, in the course of his address, submitted that they were forced by superior authority to act as they did. As he put it, "they were pushed by an invisible hand to disobey the Court Order". Although, having regard to the nature of things, it is very improbable that either Mr. Antoniou or Mr. Karakoulas would have acted on his own initiative without seeking fresh instructions from higher authority, nevertheless, in the face of the denial of these officers that they received fresh instructions after the Court Order came to their knowledge, and in the absence of any evidence to the contrary, the Court cannot speculate.

Mr. Karakoulas admits that the Court Order was read out to him at 11 a.m. at the Nicosia Airport, but he refused to accept it as it was not "directed against him", as he says. In his apology he states that he honestly believed that he had no personal responsibility in the matter as he was given instructions by the Acting Chief of Police, Mr. Antoniou. It should be observed, however, that Mr. Karakoulas, not being a member of the Police Force, was not bound by any orders given by the Commander of Police, in any event. It would seem from a perusal of the order which Mr. Karakoulas gave to Mr. Evdokios Savva, to proceed with the deportation of the applicant, that he (Mr. Karakoulas) was acting rather as the agent of the Commander of Police who was charged with the execution of the deportation order which had been made by the Minister of Interior. He did not seek any legal advice from the Attorney-General's office and his case is that he did not communicate with the Minister or any other superior authority, after the Court Order was brought to his knowledge. He has been the Republic's Migration Officer since 1960 and he had served for seven years in the same department prior to Independence.

The case against Mr. Karakoulas has to be decided in the light of these circumstances.

Now, as regards the Acting Commander of Police, Mr. Antoniou. In his apology the explanation he gave is that he was acting under the instructions of his superiors, that is, that prior to the issue of the Court Order he had been given strict instructions by the Minister of Interior to execute the deportation order against the applicant. When the contents of the Court Order were brought to his knowledge by Inspector Zenios, he says that he did not succeed in getting fresh instructions from his Minister, who was at the time attending an official meeting at Karavas, accompanied by the Director-General of the Ministry, and that it did not occur to him to seek legal advice.

In these days of wireless telephone and other means of telecommunication it would be very surprising if a Chief of Police could not get in touch with his superiors in Nicosia or elsewhere, or seek legal advice regarding the effect of a Court Order ; but the fact remains that his case is that, in spite of his efforts, he could not get fresh instructions from his superiors and he, therefore, has himself to blame for taking the initiative to proceed with the execution of the deportation, after he came to know of the Court Order. From his first affidavit in this matter he appears to have been under some misapprehension regarding the law on the point, as the Court Order was not " directed against the Cyprus Police ", as he put it.

The remaining three Police Officers (Inspector Zenios, Chief Inspector Solomonides and A.S.P. Theocharides), are more or less in the same position and their line of defence is similar. Mr. Zenios and Mr. Solomonides in their apologies state that they were performing their duties under superior orders ; that when the Court Order was brought to their knowledge they contacted the Acting Commander of Police for fresh instructions ; and that they were under some misapprehension as to the law (the Court Order not being directed against the police, as they put it).

Assistant Superintendent Theocharides came on the scene at the last stage. This was at 11.40 a.m., when the Commander of Police ordered police reinforcements to go to the Airport, and he went there in charge of the police party. On arrival he got to know of the Court Order and his explanation is that he was acting under superior orders.

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As already stated, superior orders constitute no defence and the respondents have all filed apologies for their conduct in obstructing the course of justice and they have unreservedly declared their respect to the Court and obedience to its orders.

Normally, in a case of contempt of this nature the appropriate punishment should be a term of imprisonment. But having given the matter most anxious consideration, after taking into account all mitigating circumstances, I would rather lean to the side of mercy and impose a fine instead of imprisonment.

Before concluding I would emphasize that I have decided to take this lenient course because this is the first time that anything of this kind has occurred and its seriousness may not have been realized by the persons concerned. After this warning, however, I do not think that it would be possible for me to show such lenience again.

In the result I agree with the order proposed to be made by the President of this Court imposing fines on the five respondents, *viz.* Mr. Antoniou, Mr. Karakoulas, Mr. Zenios, Mr. Solomonides and Mr. Theocharides, and directing the payment of costs by all six respondents.

STAVRINIDES, J. : I agree with the President and Mr. Justice Josephides that neither a superior order nor any flaw in a Court Order owing to which it might be judicially discharged would constitute a defence to an application to punish for contempt ; and that not only a party to whom a Court Order is addressed but also any person who knowingly interferes with the execution of such an order is liable to punishment.

I further agree as to the order proposed by my brothers to whom I have referred.

In the circumstances I think it unnecessary to add anything.

L. LOIZOU, J. : The facts have already been stated and there is no need for me to rehearse them at length. I will confine myself to a very brief recapitulation of some essential features.

As things have developed the question that this Court now has to decide is the punishment to be imposed on

each of the remaining six *ex parte* respondents in these proceedings having regard to the degree to which they are implicated.

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I am in complete agreement with what has been said regarding the seriousness of the case ; in fact I think that in view of the conduct of some of the respondents this has become an exceptionally grave case. It is for this reason that, in their case, and much to my regret, I find myself unable to concur with the conclusions reached by my brethren on the question of punishment.

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The first question that I propose to deal with is the degree of complicity of each of the remaining *ex parte* respondents.

I am satisfied that, on the material before the Court, the respondents Demetrios Karakoulas, the Migration Officer and Savvas Antoniou, the Acting Police Commander, have played a more important role than any of the other respondents in bringing about the removal of the applicant beyond the jurisdiction of the Court, contrary to the interim order, thereby obstructing the course of justice and they, therefore, bear the greatest responsibility and must consequently suffer the heaviest punishment.

The first of these officers in his affidavit of the 16th November states that on the morning of the 7th November, 1970, he went to the airport in order to deliver to the applicant a letter respecting the cancellation of his passport ; there an attempt was made to serve him with copy of the Court order but he refused to accept it as it was not directed against him and then the order was read out to him. He concludes his affidavit by saying that he had nothing to do with the detention and deportation orders.

In his affidavit of the 18th November he says that he honestly believed that he had no personal responsibility in the matter as he was given instructions by the Acting Chief of Police ; but now realizes that on account of his conduct the course of justice was obstructed and he expresses his regret and apologies.

This respondent, it will be remembered, is the person who signed *exhibit* 'A' ordering Cyprus Airways "to proceed with the deportation of Constantinos Ioannides of Kyrenia, despite the existence of a provisional order issued by the Supreme Court on the 7th November, 1970".



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The Acting Police Commander in his affidavit of the 16th November says that in the afternoon of the 6th November he received the detention and deportation orders from the Minister of the Interior who instructed him to have them executed the following morning unless he received from him instructions to the contrary and that, thereupon, he gave the necessary instructions to a team of officers. On the morning of the following day, the 7th November, at about 11.00 a.m. Police Inspector Demos Zenios, himself an *ex parte* respondent in these proceedings, rang him up and informed him about the provisional order. He asked the Inspector whether the order was directed against the Police and the reply was in the negative. He was not able to get fresh instructions from his Minister and he honestly believed that it was his duty to obey and carry out the order of his superiors.

In his affidavit of the 18th November he says that he honestly believed that he had no responsibility in the matter as he was acting under the instructions of his superiors but now fully realizes that on account of his conduct the course of justice was obstructed and he expresses his regret and apologies.

That they might have doubts regarding their own responsibility and the consequences for acting contrary to the Court order is understandable. But they could have no doubt at all that, irrespective of whether they had any personal responsibility in the matter or not, they were by their conduct and actions actually obstructing the course of justice.

And I must say that I am astonished at the statement of the Acting Police Commander that although at least two hours elapsed from the moment he was informed of the Court order until the departure of the aircraft taking the applicant out of the jurisdiction he could not communicate with his Minister, whose whereabouts were no secret—he was at a meeting at Karavas—especially in view of the fact that, as it appears from the affidavit of the Director-General of the Ministry of the Interior, the Minister could and was in fact in the course of the meeting at 12.15 hours reached on the phone by somebody in Nicosia who, presumably, informed him of the developments.

Also it seems to me very strange why it did not occur to these officers, in spite of the rumpus that was created, to seek legal advice from the Attorney-General's office, as it was their plain duty to do, in the circumstances, instead

of which the Migration Officer saw fit to take instructions from the Acting Commander of Police and in his turn to order the owners of the aircraft to proceed with the deportation of the applicant, and the Acting Commander of Police, who has been described by counsel appearing for him as a person with a disciplined mind but with no legal education, took it, nevertheless, upon himself to order his subordinate officers as well as the Migration Officer to proceed with the deportation of the applicant in disregard and disobedience of the provisional order.

One is almost tempted to presume that these officers were not concerned with what the legal position was and that they were determined to pursue applicant's deportation under any circumstances.

It was made abundantly clear to this Court by learned senior counsel of the Republic that the reference in the affidavits of the Acting Police Commander to instructions of his superiors relates to the original instructions of the Minister of the Interior and not to any instructions from any person in authority given after the issue of the Court order.

To a somewhat lesser degree responsible are the three police officers, Chief Inspector Kyriacos Solomonides, Inspector Demos Zenios and Assistant Superintendent Theodoros Theocharides.

The first of these officers was in charge of the police party entrusted with the execution of the detention and deportation orders ; the second did not come into the picture until the applicant was taken at Nicosia airport on the morning of the 7th November ; and the third at a still later stage. Although they were all made aware of the Court order they, nevertheless, in defiance and in contempt thereof forcibly put the applicant on the aircraft which carried him out of the jurisdiction.

All three have sworn affidavits in support of the Opposition to this application and after the commencement of the proceedings they filed additional identical affidavits saying that they did not intend to disobey the order of the Court and honestly believed that they had no responsibility in the matter as they were acting under the instructions of their superiors. They conclude by expressing their regret and apologies for their conduct.

There is no doubt that these officers were all along acting under the express orders of the Acting Police Commander.

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But superior orders cannot justify disobedience to a Court order and cannot be a defence for contempt ; nor do I think that, normally, much weight can be attached to such orders as a mitigating circumstance. In the circumstances of this case, however, one cannot but take into account the position in which these officers found themselves and their anxiety as to the consequences that disobedience to the orders of their Commander might have on themselves. It is for this reason only that I make the differentiation between the degree of their responsibility and that of the first two *ex parte* respondents.

There only remains the General Manager of Cyprus Airways Ltd., Mr. Evdokios Savva. He, like Captain Ecob, filed an affidavit with full apology at the earliest opportunity ; and he resisted all attempts to persuade him to ask the Captain to accept applicant as a passenger until the very last. He only yielded to the pressure after the Migration Officer handed to him *exhibit* A and told him that there were strict instructions from high Government quarters and the police to the effect that the applicant should be carried by the airplane and when he could no longer communicate with his legal adviser.

In my opinion his responsibility is much smaller than that of any of the remaining *ex parte* respondents and I agree that in his case an order for the payment of his share of the costs will be sufficient.

As to the other five *ex parte* respondents however, I, like my brethren, think that the appropriate sentence for contempt of this nature is, ordinarily, imprisonment. But, with respect, unlike them I have not been persuaded that the circumstances of this case afford sufficient justification for the imposition of any lesser punishment.

I do not for one moment lose sight of the fact that I am here dealing with good, honest citizens with unblemished characters and loyal public service to their credit ; but on the other hand the contempt committed by them calculated and deliberate as it was, amounts to serious interference with the administration of justice and was a severe blow at the rule of law. And the maintenance of law and order and the preservation of unobstructed administration of justice are fundamentals which must be guarded jealously and must be given priority above all other considerations.

To my mind any sentence short of imprisonment would be inadequate in the case of these respondents. I would

commit them to terms of imprisonment proportionate to the degree of their complicity.

As this is a minority judgment and as on the basis of the judgments just delivered the sentence of the Court is the imposition of a fine I do not think that I need say anything more except that I agree with the proposed order for costs.

HADJIANASTASSIOU, J. : I would like to reiterate what I have said in my judgment on December 4, 1970, that the sole purpose of the proceedings for contempt is to give our Courts the power of effectively protecting the rights of the public by ensuring that the administration of justice shall not be obstructed or prevented by anyone, either in authority or acting under superior orders. Indeed, those who strike at the very foundation of our society, and to maintain law and order the Judges of this Court have power under the Constitution to deal with those who offend against it and to imprison a person without trial.

On November 6, 1970, the Minister of the Interior called the Acting Commander of the Police in his office and handed to him in the afternoon detention and deportation orders, *exhibits* B1 and B2, with regard to the applicant, Costas Polycarpou Ioannides, and he instructed him that his orders should be executed unless the police had instructions from him to the contrary. Indeed, the Acting Commander conveyed personally the instructions of his Minister to his men that the applicant was to be deported to Greece.

As it appears from both these *exhibits* (B1 & B2), on November 6, 1970, the Council of Ministers decided the deportation of the applicant under the provisions of the Aliens & Immigration Law, Cap. 105, treating him as an "alien" within the definition meaning of the law, and as a prohibited immigrant under section 6 (1) (g) of the same law, liable to deportation under the provisions of section 14 (1), under which the deportation and detention orders were made by the Minister of the Interior. In fact, the reasons given for the deportation order in *exhibit* B2 are identical to the wording of section 6 (1) (g). *Exhibit* B2 reads as follows :—

“ Ο Περί Ἀλλοδαπῶν καὶ Μεταναστεύσεως Νόμος Κεφ. 105

Διάταγμα Ἀπελάσεως δυνάμει τοῦ ἄρθρου 14

Ἐπειδὴ τὸ Ὑπουργικὸν Συμβούλιον ἐν τῇ ἐνασχῆσει τῶν εἰς αὐτὸ χορηγουμένων ἐξουσιῶν δυνάμει τοῦ ἄρθρου 6 (1)

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(στ) και (ζ) του περί Ἀλλοδαπῶν και Μεταναστεύσεως Νόμου, Κεφ. 105, και επί τῆ βάσει τῶν ἐνώπιον αὐτοῦ τεθέντων στοιχείων θεωρεῖ τὸν Κώσταν Πολυκάρπου Ἰωαννίδην ὡς ἀνεπιθύμητον πρόσωπον και ὡς ἐπικίνδυνον εἰς τὴν εἰρήνην, δημοσίαν τάξιν και καλὴν διακυβέρνησιν τῆς Δημοκρατίας και ὡς τείνοντος νὰ διεγείρῃ ἔχθραν μεταξύ τοῦ λαοῦ τῆς Δημοκρατίας και τῆς Κυβερνήσεως αὐτῆς, ἐκήρυξε αὐτὸν ὡς ἀπηγορευμένον μετανάστην, διὰ ταῦτα ἐνασκῶν τὰς εἰς ἐμὲ χορηγουμένας ἐξουσίας δυνάμει τοῦ ἄρθρου 14 τοῦ προρηθέντος νόμου διὰ τοῦ παρόντος διατάττω ὅπως ὁ εἰρημένος Κώστας Πολυκάρπου Ἰωαννίδης θὰ ἀπελαθῆ εἰς Ἑλλάδα και ὅτι οὗτος δέον ὅπως ἀναχωρήσῃ ἀπὸ τῆν Κύπρον τὸ ταχύτερον δυνατὸν και μετὰ ταῦτα παραμείνῃ μακρὰν τῆς Κύπρου.”

Armed with these two orders, Chief Inspector Solomonides, together with other police officers, visited the house of the applicant in Kyrenia on November 7, 1970, and carried out the instructions of the Acting Commander of the Police. The applicant was taken under police custody to Nicosia, but in the meantime his lawyers, who were informed about the arrest of the applicant, filed a recourse before the Supreme Court claiming a relief that the validity of the detention and deportation orders was contrary to Article 14 of the Constitution, which provides that “no citizen shall be banished or excluded from the Republic under any circumstances”; and a provisional order suspending the execution of the orders until final determination of the recourse.

This application was dealt with by one of the Judges of this Court, fully realizing the urgency of the matter, since the application concerned the liberty of a person who was residing in Cyprus; and because the Courts always put the liberty of the subject before all else. The order made by the Court reads, *inter alia*, as follows:—

“This Court doth order that, until further order, the respondents as well as any other organs, authorities or persons in the Republic, acting on the instructions of the respondents or otherwise, be and are hereby prohibited and restrained from in any way taking action in order to deport the applicant from Cyprus or from in any way taking part or co-operating in bringing about such a deportation. This order is made returnable at 12.00 noon today.”

Unfortunately, later events, which are referred to at length in the judgment of the President of this Court, proved

that the 7th of November, 1970, was a day long to be remembered by the citizens of this island, because on this day the administration of justice received a serious blow by the very same persons whose duty is to enforce the law of the land so that honest citizens may go about their affairs in peace. These police officers, however, instead of proving that they are the servants of the law itself, *exhibited*, in an alarming way, a deliberate attempt to disobey and obstruct the execution of the provisional order of this Court, in such a way so that the course of justice was deflected or interfered with, with the result that the applicant finally was deported from Cyprus. I would repeat that these police officers have acted deliberately contrary to the provisional order forgetting that in the long run it is the Courts of justice which are the last bastion of individual liberty, and that they apply daily to the Courts in order to take steps to enforce law and order against the unruly members of the community.

This document, dated November 7, 1970, which I quote in this judgment, was handed by Mr. Karakoulas to Mr. E. Savva at 12.25 p.m., and shows how lightheartedly, to use mild language, the Immigration Officer and the Acting Commander have approached and treated the question of the interim order of this Court. I read :—

“ TO WHOM IT MAY CONCERN

This is to certify that Mr. Demetrios Karakoulas after instructions from the Commander of Police hereby orders Cyprus Airways to proceed with the deportation of Constantinos Ioannides, of Kyrenia, despite the existence of a provisional order issued by the Supreme Court on the 7th November, 1970, and which came to the knowledge of the said Mr. Karakoulas and is hereby attached.”

Although the contents of this document show clearly what was in the minds of both the Acting Commander and of the Immigration Officer, nevertheless, what is more surprising is the attitude of Mr. Karakoulas, who, although he had already authorised the departure of the aeroplane at 12.25 p.m., when he appeared in Court together with Mr. Frangos at 12.50 p.m. nothing was said about it, and after a short break of the hearing of the case, Mr. Frangos informed the Court at 1.10 p.m. that the Immigration Officer received a telephone message from the airport that the aeroplane had left for Greece shortly before with the applicant on board.

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Mr. Frangos, on behalf of the police officers, contended that these respondents were acting under the orders of their superior officers, in execution of orders made under the Aliens & Immigration Law, and that they believed in good faith that their duty required them to carry out the orders of the Minister. With regard to the Acting Commander of the Police, counsel argued that he tried to contact the Minister after he was informed of the provisional order, but he was unable to do so, because he was at a meeting at Karavas. It would be observed from the affidavits before the Court that all the respondents have put forward a full and unqualified apology, which, counsel argued in mitigation, entitled them to every leniency of the Court.

Before dealing with the question of sentence, I would deal with the question of the plea put forward that they were acting under superior orders. I view with apprehension the attitude of these officials of the State, who when face to face with a claim involving the liberty of a person, purposely avoided to obtain legal advice, and are now trying to put forward an unacceptable plea. I would most strongly emphasize that obedience to a superior whom one is bound to obey, is no defence for disobeying the order of the Court, and it does not excuse that person who does an illegal act, *viz.* interfering with or obstructing the due administration of justice. I would even go further and state that this was a clear example of illegality, and that it would be so if such order of the Court was later on discharged by the same Court or was quashed on appeal.

Now I must turn to the question of sentence, and in order to reach a conclusion as to what is the proper punishment to be imposed, which should be commensurate with the offence, I have to consider the merits of the case of each offender. I am still of the opinion that the contempt committed is grave and that the conduct of these offenders deserves to be punished with a term of imprisonment because of the wrong done to the public by weakening the authority and influence of the Courts. However, since the last adjournment of this case, I am prepared, to take into consideration the mitigating circumstances of each offender, and take a more lenient view, particularly so because (a) I have indicated earlier that the return of the applicant to the island would, in reality, purge to a considerable extent the contempt of Court, and weigh with me as an important mitigating factor; (b) that in view of the fact that all the respondents are of good character with a long public

service, I am sure that they have now learnt that our Courts should be left free to administer justice without obstruction from whatever quarter it may come ; and (c) that everyone has now been warned that if this sort of conduct is repeated by anyone in the future, whatever their motives, no excuse would be accepted by me and a sentence of imprisonment will be imposed.

Finally, I would add that because and only because this is the first time that anything of this kind has happened in Cyprus since the establishment of the Republic, I would agree not to impose a term of imprisonment, but to follow the course proposed by the majority of my brother Judges, and impose a fine on each offender, except Mr. Evdokios Savva.

In reaching this decision, I have also in mind the judgment in the case of *Polycarpou v. The Police* (1970) 2 C.L.R. 111, where the Court, at p. 116 said that :

“Imprisonment, as a sanction in a system of social defence, should only be resorted to when no other sentence can fit the circumstances of a particular case. It should be avoided whenever such a course is possible ; and if it cannot be avoided, it must be made to serve one of the objects which such a sentence is intended to serve. In this case, the only justification for a sentence of imprisonment would be its deterrent effect on the appellant and other policemen, but in the circumstances of this case, we think that imprisonment was not unavoidable ; and that a fine would meet the case.”

I am content now to follow the reasoning of that judgment, and I would repeat, that I agree with the order proposed by the President with regard to the amount of fine to be imposed on each of the five respondents. I also agree that Mr. Evdokios Savva should pay his share of costs.

VASSILIADES, P. : In the result, the sentence of this Court, decided by majority, is that respondents Nos. 1, 2 and 5 above, namely Demos Zenios, Kyriacos Solomonides and Theodoros Theocharides shall, each, pay a fine of seventy-five pounds (£75) or, in default, be imprisoned for one month ; and respondents Nos. 3 and 4, namely Demetrios Karakoulas and Savvas Antoniou, shall, each, pay a fine of one hundred and fifty pounds, or, in default, be imprisoned for two months.

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—  
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All fines as above, are made payable within 30 days from today.

In addition and as part of the punishment for the contempt committed, each of the above named six respondents (now including No. 6, Evdokios Savva) shall pay to the applicant one sixth of his costs in the contempt proceedings for two advocates, on the scale for claims exceeding £500, but not exceeding £2, 000 pounds, as taxed or allowed by the appropriate Registrar, within six weeks from taxation or approval. Leave to execute thereafter, granted.

*Order accordingly.*