[ΔΙΚΑΣΤΑΙ ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρόεδρος,
ΣΤΑΥΡΙΝΙΔΗΣ, Λ. ΛΟΙΖΟΥ, Α. ΛΟΙΖΟΥ, ΜΑΛΑΧΤΟΣ, Δικασταί]

27η Ἰουλίου 1973

ΠΟΛΥΚΑΡΠΟΣ ΙΩΑΝΝΙΔΗΣ
ν.
ΑΣΤΥΝΟΜΙΑΣ

ΠΟΛΥΚΑΡΠΟΣ ΙΩΑΝΝΙΔΗΣ,

Ἐφεσείων,

κατὰ

ΑΣΤΥΝΟΜΙΑΣ,

Ἐφεσιβλήτου.

(*Ποινικὴ Ἔφεσις ὑπ' ἀρ.* 3479).

Δίκαιον τῆς ἀνάγκης – Ἐπίκλησις καὶ ἐφαρμογὴ τοῦ «δικαίου τῆς ἀνάγκης» – Ἐπιτρεπταὶ πράξεις κατὰ παρέκκλισιν ἐκ τῶν διατάξεων τοῦ Συντάγματος – The Attorney-General v. *Ibrahim and Others,* 1964 C.L.R. 195 *– βλ. καὶ κατωτέρω.*

Πρόεδρος τῆς Δημοκρατίας – Ἐγκατάστασις αὐτοῦ – Διαβεβαίωσις πίστεως – Ἄρθρον 42 *τοῦ Συντάγματος – Ἡ ἐν τῇ πράξει λειτουργία τοῦ Συντάγματος ἐν τῇ ὁλότητί του κατέστη ἐξ ἀντικειμένου ἀδύνατος λόγῳ τῆς ἐπικρατούσης ἐν τῇ Νήσῳ ἀνωμάλου καταστάσεως – Διαβεβαίωσις πίστεως δυνάμει τοῦ ἄρθρου* 42 *τοῦ Συντάγματος δοθεῖσα οὐχὶ κατὰ πλήρη συμμόρφωσιν πρὸς τὸ κείμενον τὸ διαλαμβανόμενον ἐν τῷ ἄρθρῳ τούτῳ – Πλὴν ὅμως ἐκ τῆς τοιαύτης ἐκτροπῆς οὐδαμῶς συνάγεται τὸ συμπέρασμα ὅτι ὁ Πρόεδρος τῆς Δημοκρατίας δὲν εἶναι ὁ Ἀρχηγὸς τῆς Πολιτείας εἰς ὃν ἀναφέρεται τὸ ἄρθρον* 46*Α τοῦ Ποινικοῦ Κώδικος περὶ ἐξυβρίσεως τοῦ Προέδρου τῆς Δημοκρατίας (βλ. κατωτέρω).*

Βουλὴ τῶν Ἀντιπροσώπων – Πενταετὴς αὐτῆς θητεία λήγουσα κατ' Αὔγουστον τοῦ 1965 *– Παράτασις δι' ἁπλοῦ νόμου τῆς θητείας ταύτης – Ἡ διεξαγωγὴ Βουλευτικῶν ἐκλογῶν κατέστη ἀνέφικτος λόγῳ τῆς ἀπὸ τοῦ* 1963 *συνεχιζομένης ἀνωμαλίας ἐν Κύπρῳ – Ἐγκύρως ὅθεν ἐγένετο ἡ προρηθεῖσα παράτασις καὶ δὴ κατ' ἐπίκλησιν καὶ βάσει τοῦ «δικαίου τῆς ἀνάγκης» – Κατὰ τὴν περίοδον δὲ τῆς τοιαύτης παρατάσεως ἡ Βουλὴ δύναται ἁρμοδίως καὶ ἐγκύρως νὰ ἀσκῇ τὴν νομοθετικὴν ἐξουσίαν καὶ τοῦτο οὐχὶ μόνον εἰς ἐπειγούσας καὶ ἐξαιρετικὰς περιπτώσεις ἀλλά, γενικῶς, κατὰ τὸν αὐτὸν τρόπον καὶ τὴν αὐτὴν ἔκτασιν ὡς καὶ*

Note: An English translation of this text appears at pp. 132 – 138 *post.*

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πρὸ τῆς τοιαύτης παρατάσεως – "Οθεν ἁρμοδίως ἐθεσπίσθη τὸ 1967 *ὁ περὶ Ποινικοῦ Κώδικος (Τροποποιητικὸς) Νόμος,* 1967 *(Νόμος* 5/1967*) διὰ τοῦ ὁποίου προσετέθη εἰς τὸν Ποινικὸν Κώδικα τὸ προδιαληφθὲν ἄρθρον* 46*Α περὶ ἐξυβρίσεως τοῦ Προέδρου τῆς Δημοκρατίας (βλ. καὶ κατωτέρω).*

'Εξύβρισις τοῦ Προέδρου τῆς Δημοκρατίας – "Αρθρον 46*Α τοῦ Ποινικοῦ Κώδικος, Κεφάλαιον* 154*, ὡς τοῦτο ἐθεσπίσθη διὰ τοῦ προδιαληφθέντος Τροποποιητικοῦ Νόμου* 5/1967 *– Οὐδεμία εἰδικὴ πρόθεσις (πέραν τῆς προθέσεως πρὸς διάπραξιν τοῦ οἰκείου ἀδικήματος) ἀπαιτεῖται διὰ τὴν στοιχειοθέτησιν τοῦ ἐν λόγῳ ἀδικήματος τῆς ἐξυβρίσεως τοῦ Προέδρου τῆς Δημοκρατίας – 'Εσφαλμένη, ὅθεν, εἶναι ἡ ἄποψις καθ' ἣν διὰ τὴν ὑπόστασιν τοῦ ἀδικήματος τούτου δέον νὰ ὑφίσταται πάντοτε πρόθεσις παρεμβάσεως εἰς τὰ καθήκοντα τοῦ 'Αρχηγοῦ τοῦ Κράτους ὑπὸ τὴν ἰδιότητα αὐτοῦ ὡς Προέδρου τῆς Δημοκρατίας.*

'Εξύβρισις τοῦ Προέδρου τῆς Δημοκρατίας – "Αρθρον 46*Α τοῦ Ποινικοῦ Κώδικος, Κεφάλαιον* 154 *– 'Εγκύρως τὸ ἄρθρον τοῦτο ἐθεσπίσθη διὰ τοῦ προρηθέντος Τροποποιητικοῦ Νόμου* 5/1967 *– βλ. ἀνωτέρω.*

'Εξύβρισις τοῦ Προέδρου τῆς Δημοκρατίας – Ποινὴ τριμήνου φυλακίσεως ἐπιβληθεῖσα ὑπὸ τοῦ πρωτοδίκου Δικαστηρίου – 'Ελαττοῦται κατ' ἔφεσιν εἰς ποινὴν φυλακίσεως ἓξ μόνον ἑβδομάδων – Καὶ τοῦτο ἐν ὄψει τῶν προσωπικῶν περιστάσεων τοῦ ἐφεσείοντος καὶ πρὸ παντὸς τῆς προβεβηκυίας ἡλικίας αὐτοῦ (70 *ἐτῶν*) *– 'Επομένως ἡ ἔφεσις τοῦ ἐφεσείοντος κατὰ τῆς ἐπιβληθείσης ὑπὸ τοῦ πρωτοδίκου Δικαστηρίου ποινῆς γίνεται δεκτὴ – 'Απορριπτομένης τῆς ἐφέσεως αὐτοῦ κατὰ τῆς καταδικαστικῆς ἐτυμηγορίας τοῦ ἐν λόγῳ Δικαστηρίου.*

Συνταγματικὸν Δίκαιον – «Δίκαιον τῆς ἀνάγκης» – 'Επίκλησις καὶ ἐφαρμογὴ τοῦ «δικαίου τῆς ἀνάγκης» – 'Επιτρεπτὴ εἰς περιπτώσεις τινὰς ἡ ἐκτροπὴ ἐκ τῶν διατάξεων τοῦ Συντάγματος βάσει τοῦ «δικαίου τῆς ἀνάγκης» – βλ. καὶ ἀνωτέρω.

Συνταγματικὸν Δίκαιον – Πρόεδρος τῆς Δημοκρατίας – 'Εγκατάστασις τοῦ Προέδρου – Διαβεβαίωσις πίστεως εἰς τὸ Σύνταγμα καὶ τοὺς Νόμους – "Αρθρον 42 *τοῦ Συντάγματος – Παρέκκλισις ἐκ τοῦ κειμένου τῆς διαβεβαιώσεως ὡς τοῦτο διαλαμβάνεται εἰς τὸ ἐν λόγῳ ἄρθρον* 42 *– Διαβεβαίωσις πίστεως εἰς τοὺς ἑκάστοτε ἰσχύοντας Νόμους ἄνευ οἱασδήποτε ἀναφορᾶς εἰς τὸ Σύνταγμα – Τοιαύτη ἐκτροπὴ ἐκ τοῦ κειμένου οὐδαμῶς ἐπηρεάζει τὴν νομικὴν θέσιν καὶ κατάστασιν τοῦ Προέδρου τῆς Δημοκρατίας.*

Δι' ἀποφάσεως τοῦ 'Επαρχιακοῦ Δικαστηρίου Λευκωσίας ὁ ἐφεσείων εὑρέθη ἔνοχος τοῦ πλημμελήματος τῆς ἐξυβρίσεως τοῦ Προέδρου τῆς Δημοκρατίας κατὰ παράβασιν τοῦ ἄρθρου 46Α τοῦ Ποινικοῦ Κώδικος ὡς οὗτος ἐτροποποιήθη διὰ τοῦ περὶ Ποινικοῦ Κώδικος (Τροποποιητικοῦ) Νόμου, 1967 (Νόμος ὑπ' ἀρ. 5/1967) καὶ κατεδικάσθη εἰς τρίμηνον φυλάκισιν. 'Ο ἐφεσείων ὑπέβαλε τὴν παροῦσαν ἔφεσιν στρεφομένην ἐναντίον τῆς ὡς ἄνω ἐτυμηγορίας τοῦ πρωτοδίκου δικαστηρίου ὡς ἐπίσης καὶ ἐναντίον τῆς ὑπὸ τούτου ἐπιβληθείσης ποινῆς φυλακίσεως.

'Εκ μέρους τοῦ ἐφεσείοντος προεβλήθησαν πρὸ τοῦ 'Ανωτάτου Δικαστηρίου, μεταξὺ ἄλλων, οἱ ἑξῆς ἰσχυρισμοί:

(1) 'Ο Πρόεδρος τῆς Δημοκρατίας, δι' ἐξύβρισιν τοῦ ὁποίου ὁ ἐφεσείων κατεδικάσθη, δὲν εἶναι δικαίῳ ὁ 'Αρχηγὸς τῆς Πολιτείας, καθ' ὅτι τὴν 28ην Φεβρουαρίου 1973, κατὰ τὴν τελετὴν τῆς ἐγκαταστάσεώς του ὑπὸ τῆς Βουλῆς τῶν 'Αντιπροσώπων συμφώνως πρὸς τὸ ἄρθρον 42 τοῦ Συντάγματος, οὗτος παρέλειψε νὰ παράσχῃ τὴν διαβεβαίωσιν πίστεως εἰς τὸ Σύνταγμα ὡς διαλαμβάνει τὸ ἐν λόγῳ ἄρθρον, περιορισθεὶς εἰς τὴν διαβεβαίωσιν πίστεως μόνον εἰς τοὺς ἑκάστοτε ἰσχύοντας Νόμους.

(2) 'Ο προδιαληφθεὶς Τροποποιητικὸς Νόμος τοῦ Ποινικοῦ Κώδικος ὑπ' ἀρ. 5 τοῦ 1967 εἶναι ἄκυρος καὶ ἀνενεργὸς ἐπειδὴ ἐθεσπίσθη ὑπὸ τῆς Βουλῆς τῶν 'Αντιπροσώπων μετὰ τὴν λῆξιν, κατ' Αὔγουστον τοῦ 1965, τῆς πενταετοῦς αὐτῆς θητείας καὶ κατὰ τὴν διάρκειαν παρατάσεως τῆς θητείας της μὴ συναδούσης πρὸς τὸ Σύνταγμα.

(3) 'Εν πάσῃ περιπτώσει ἡ ἐν λόγῳ παράτασις τῆς θητείας τῆς Βουλῆς δὲν ἠδύνατο νὰ δικαιολογηθῇ βάσει τοῦ « δικαίου τῆς ἀνάγκης», ὄχι μόνον διότι ἡ τοιαύτη παράτασις δὲν ἦτο τὸ ἐπιτρεπτόν, ὑπὸ τὰς περιστάσεις, μέτρον ἐπὶ τῷ τέλει νὰ διασφαλισθῇ ἡ συνέχισις τῆς ἐνασκήσεως τῆς νομοθετικῆς ἐξουσίας μετὰ τὴν λῆξιν τῆς κανονικῆς πενταετοῦς θητείας τῆς Βουλῆς ὡς προείρηται, ἀλλὰ καὶ διότι δὲν ὑφίσταντο αἱ προϋποθέσεις αἵτινες ἠδύναντο νὰ δικαιολογήσωσι προσφυγὴν εἰς τὸ « δίκαιον τῆς ἀνάγκης». Εἰδικώτερον, ἀφ' ἧς στιγμῆς ἡ κανονικὴ πενταετὴς θητεία τῆς Βουλῆς ἐξέπνευσε, τὸ «δίκαιον τῆς ἀνάγκης» θὰ ἠδύνατο τὸ πολὺ νὰ δικαιολογήσῃ τὴν ὑπὸ τοῦ 'Υπουργικοῦ Συμβουλίου ἀνάληψιν τοῦ νομοθετικοῦ ἔργου τῆς Βουλῆς καὶ τὴν θέσπισιν Νόμων διὰ Διαταγμάτων τοῦ Συμβουλίου τούτου.

(4) 'Εν πάσῃ περιπτώσει τὸ προρηθὲν ἄρθρον 46Α τοῦ Ποινικοῦ Κώδικος, ἐν τῇ ὀρθῇ αὐτοῦ ἑρμηνείᾳ, προϋποθέτει εἰδικὴν πρόθεσιν παρὰ τῷ αὐτουργῷ, καὶ δὴ τὴν πρόθεσιν ἐπεμβάσεως εἰς τὰ καθήκοντα τοῦ 'Αρχηγοῦ τῆς Πολιτείας ὑπὸ τὴν ἰδιότητα αὐτοῦ ὡς Προέδρου τῆς Δημοκρατίας.

'Επομένως, ἐφ' ὅσον εἰς τὴν προκειμένην ὑπόθεσιν ἐλλείπει τοιαύτη εἰδικὴ πρόθεσις, κακῶς τὸ Πρωτόδικον Δικαστήριον ἀπεφήνατο ὅτι ὁ ἐφεσείων διέπραξε τὸ ἀδίκημα τῆς ἐξυβρίσεως τοῦ Προέδρου τῆς Δημοκρατίας περὶ οὗ τὸ ἄρθρον 46Α τοῦ Ποινικοῦ Κώδικος, ὡς τοῦτο ἐθεσπίσθη διὰ τοῦ Τροποποιητικοῦ Νόμου ὑπ' ἀρ. 5 τοῦ 1967 (βλ. ἀνωτέρω).

Τὸ 'Ανώτατον Δικαστήριον, ἀπορρίψαν τὰ ὡς ἄνω ἐπιχειρήματα, ἐπεβεβαίωσε τὴν καθ' ἧς ἡ ἔφεσις ἐτυμηγορίαν τοῦ Πρωτοδίκου Δικαστηρίου. Καθ' ὅσον ὅμως ἀφορᾷ εἰς τὴν ἔφεσιν κατὰ τῆς ἐπιβληθείσης ποινῆς τῆς τριμήνου φυλακίσεως, τὸ 'Ανώτατον Δικαστήριον μετὰ δισταγμοῦ ἀπεφάνθη ὅτι ἡ ἐν λόγῳ ποινή, καίτοι ὀρθῶς ἐπεβλήθη, θὰ ἔπρεπε ἐν τούτοις νὰ συντμηθῇ εἰς φυλάκισιν ἓξ μόνον ἑβδομάδων, καὶ τοῦτο ἐν ὄψει τῶν προσωπικῶν περιστάσεων τοῦ ἐφεσείοντος, ἰδιαιτέρως δὲ ἐν ὄψει τῆς προβεβηκυίας ἡλικίας αὐτοῦ. Καὶ οὕτω τελικῶς ἡ κατὰ τῆς ποινῆς ἔφεσις ἐγένετο δεκτή, τῆς περιόδου τῆς φυλακίσεως ἐλαττωθείσης ὡς προείρηται.

Τὰ πραγματικὰ περιστατικὰ τῆς ὑποθέσεως ἐκτίθενται ἀρκούντως ἐν τῇ ἀποφάσει τοῦ 'Ανωτάτου Δικαστηρίου (βλ. κατωτέρω), διὰ τῆς ὁποίας ἡ μὲν ἔφεσις κατὰ τῆς καταδικαστικῆς ἐτυμηγορίας τοῦ Πρωτοδίκου Δικαστηρίου ἀπερρίφθη, ἀλλ' ἡ ἔφεσις κατὰ τῆς ἐπιβληθείσης ποινῆς ἐγένετο δεκτή.

'Υποθέσεις παρατεθεῖσαι:

The Attorney-General v. *Ibrahim and Others*, 1964 C.L.R. 195.

Ἔφεσις κατὰ τῆς καταδίκης καὶ ποινῆς.

Ἔφεσις ὑπὸ τοῦ Πολυκάρπου 'Ιωαννίδη κατὰ τῆς καταδίκης καὶ τριμήνου ποινῆς φυλακίσεως ἐπιβληθείσης ὑπὸ τοῦ 'Επαρχιακοῦ Δικαστηρίου Λευκωσίας (Φρ. Κολώτας, Ε.Δ.) κατὰ τὴν 23ην 'Ιουνίου, 1973 (ὑπόθεσις ὑπ' ἀρ. 7529/73) διὰ τὸ ἀδίκημα τῆς ἐξυβρίσεως τοῦ Προέδρου τῆς Δημοκρατίας ὡς 'Αρχηγοῦ τῆς Πολιτείας κατὰ παράβασιν τοῦ ἄρθρου 46(Α) τοῦ Ποινικοῦ Κώδικος,

ὡς οὗτος ἐτροποποιήθη ὑπὸ τοῦ περὶ Ποινικοῦ Κώδικος (Τροποποιητικοῦ) Νόμου τοῦ 1967 (Νόμος 5/67).

Λ. Παπαφιλίππου καὶ Ε. Κιττῆς, διὰ τὸν Ἐφεσείοντα.

Λ. Λουκαΐδης, Ἀνώτερος Δικηγόρος τῆς Δημοκρατίας, διὰ τὴν Ἐφεσίβλητον.

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρ.: Ὁ ἐφεσείων κατεδικάσθη ὑπὸ τοῦ Ἐπαρχιακοῦ Δικαστηρίου Λευκωσίας, τὴν 23ην Ἰουνίου 1973, εἰς τρίμηνον φυλάκισιν, εὑρεθεὶς ἔνοχος τοῦ ἀδικήματος ἐξυβρίσεως τοῦ Προέδρου τῆς Δημοκρατίας, ὡς Ἀρχηγοῦ τῆς Πολιτείας, κατὰ παράβασιν τοῦ ἄρθρου 46(Α) τοῦ Ποινικοῦ Κώδικος (Κεφ. 154), ὡς οὗτος ἐτροποποιήθη ὑπὸ τοῦ περὶ Ποινικοῦ Κώδικος (Τροποποιητικοῦ) Νόμου τοῦ 1967 (Νόμος 5/1967).

Ἡ παροῦσα ἔφεσις ἐγένετο καὶ κατὰ τῆς καταδίκης τοῦ ἐφεσείοντος καὶ κατὰ τῆς ποινῆς ἥτις ἐπεβλήθη εἰς αὐτόν.

Ἐκ μέρους τοῦ ἐφεσείοντος προεβλήθη ὁ ἰσχυρισμὸς ὅτι ὁ Πρόεδρος τῆς Δημοκρατίας, δι' ἐξύβρισιν τοῦ ὁποίου κατεδικάσθη ὁ ἐφεσείων, δὲν εἶναι νομίμως ὁ Ἀρχηγὸς τῆς Πολιτείας διότι τὴν 28ην Φεβρουαρίου 1973, κατὰ τὴν τελετὴν τῆς ἐγκαταστάσεώς του ὑπὸ τῆς Βουλῆς τῶν Ἀντιπροσώπων, συμφώνως πρὸς τὸ ἄρθρον 42 τοῦ Συντάγματος, δὲν διεβεβαίωσε πίστιν εἰς τὸ Σύνταγμα ἀλλὰ μόνον εἰς τοὺς Νόμους.

Οἱ συνήγοροι τοῦ ἐφεσείοντος ἰσχυρίσθησαν, περαιτέρω, ὅτι ὁ Νόμος 5/1967 εἶναι ἄκυρος διότι ἐθεσπίσθη ὑπὸ τῆς Βουλῆς τῶν Ἀντιπροσώπων μετὰ τὴν λῆξιν, κατὰ Αὔγουστον τοῦ 1965, τῆς πενταετοῦς περιόδου δι' ἣν αὕτη ἐξελέγη, καὶ κατὰ τὴν διάρκειαν παρατάσεως τῆς θητείας της μὴ συναδούσης πρὸς τὸ Σύνταγμα. Ὑπεστηρίχθη, ἐπίσης, ὅτι ἡ παράτασις τῆς θητείας τῆς Βουλῆς δὲν ἠδύνατο νὰ δικαιολογηθῇ δυνάμει τοῦ «δικαίου τῆς ἀνάγκης», ὄχι μόνον διότι δὲν ἦτο αὕτη τὸ ἐπιτρεπτόν, ὑπὸ τὰς περιστάσεις, μέτρον διὰ τὴν διασφάλισιν τῆς συνεχίσεως τῆς ἐνασκήσεως τῆς νομοθετικῆς ἐξουσίας μετὰ τὴν λῆξιν τῆς κανονικῆς θητείας τῆς Βουλῆς, ἀλλὰ καὶ διότι δὲν ὑφίσταντο αἱ προϋποθέσεις αἱ δικαιολογοῦσαι προσφυγὴν εἰς τὸ «δίκαιον τῆς ἀνάγκης». Προεβλήθη δέ, διαζευκτικῶς, καὶ τὸ ἐπιχείρημα ὅτι, ἐν πάσῃ περιπτώσει, ἡ Βουλὴ ἠδύνατο, διαρκούσης τῆς παραταθείσης θητείας της, νὰ νομοθετῇ μόνον ἐν σχέσει πρὸς ἐπειγούσης φύσεως καὶ ἀπροβλέπτους περιστάσεις καὶ ὅτι ὁ Νόμος 5/1967 δὲν ἐθεσπίσθη πρὸς ἀντιμετώπισιν τοιούτων περιστάσεων.

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ΑΣΤΥΝΟΜΙΑΣ

Τὸ ὅτι, καὶ διατί, δύναται, ἐν ὄψει ἰδίως τῆς φύσεως τοῦ Συντάγματός μας, νὰ γίνῃ ἐπίκλησις τοῦ «δικαίου τῆς ἀνάγκης» διὰ σκοποὺς ἀντιμετωπίσεως ἀπροβλέπτων ἐξαιρετικῶν περιστάσεων, μὴ δυναμένων νὰ ἀντιμετωπισθῶσιν ἐντὸς τῶν πλαισίων τῶν συναφῶν συνταγματικῶν προνοιῶν, ἀνεπτύχθη διεξοδικῶς εἰς τὰς ὑπὸ τοῦ Ἀνωτάτου Δικαστηρίου ἐκδοθείσας ἀποφάσεις εἰς τὴν ὑπόθεσιν *Γενικὸς Εἰσαγγελεὺς τῆς Δημοκρατίας κατὰ Μουσταφᾶ Ἰμπραχὴμ καὶ ἄλλων*, 1964 Α.Α.Δ. 195. Ὁ δὲ ἐφεσείων δὲν ἀμφισβητεῖ τὴν οὕτω καθιερωθεῖσαν νομικὴν θέσιν.

Κατόπιν σταθμίσεως ὅλων τῶν συναφῶν δεδομένων κατελήξαμεν εἰς τὸ συμπέρασμα ὅτι ἡ ἀπὸ τοῦ 1963 συνεχιζομένη ἀνωμαλία ἐν Κύπρῳ, λόγῳ τῆς ὁποίας δὲν ἠδύναντο νὰ διεξαχθῶσι βουλευτικαὶ ἐκλογαί, κατέστησε δυνατὴν καὶ ἐπιβεβλημένην τήν, διὰ τῆς προσφυγῆς εἰς τὸ «δίκαιον τῆς ἀνάγκης», παράτασιν τῆς θητείας τῆς Βουλῆς τῶν Ἀντιπροσώπων, διὰ προσωρινῶν νομοθετικῶν μέτρων, καὶ οὕτω ἐξησφαλίσθη ἡ συνέχισις τῆς ἀσκήσεως πλήρως τῆς νομοθετικῆς ἐξουσίας κατὰ πάντα οὐσιώδη, ἐν σχέσει πρὸς τὴν παροῦσαν ὑπόθεσιν, χρόνον. Αἱ προτάσεις νόμων περὶ παρατάτάσεως, ὡς ἄνω, τῆς θητείας τῆς Βουλῆς εἰσήγοντο ἑκάστοτε ἐνώπιόν της πρωτοβουλίᾳ τοῦ Ὑπουργικοῦ Συμβουλίου.

Ἐν ὄψει, δέ, σὺν ἄλλοις, τῆς δομῆς τῆς Πολιτείας, ἥτις βασίζεται ἐπὶ τῆς ἀρχῆς τοῦ διαχωρισμοῦ τῶν Ἐξουσιῶν, δὲν δυνάμεθα νὰ συμφωνήσωμεν μετὰ τῶν συνηγόρων τοῦ ἐφεσείοντος ὅτι τὸ «δίκαιον τῆς ἀνάγκης» ἐδικαιολόγει μόνον τήν, μετὰ τὴν λῆξιν τῆς κανονικῆς θητείας τῆς Βουλῆς, ἀνάληψιν τοῦ ἔργου της ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου καὶ τὴν θέσπισιν νόμων διὰ διαταγμάτων τούτου.

Τῆς παρατάσεως τῆς θητείας τῆς Βουλῆς οὔσης ἐγκύρου ὑπὸ τὰς περιστάσεις, ἡ νομοθετικὴ ἐξουσία ἠδύνατο νὰ ἀσκηθῇ ὑπ' αὐτῆς οὐχὶ μόνον εἰς ἐπειγούσας καὶ ἐξαιρετικὰς περιπτώσεις, ἀλλὰ ὡς καὶ πρὸ τῆς παρατάσεως, καὶ ὡς ἐκ τούτου οὐδὲν κώλυμα ὑφίστατο διὰ τὴν θέσπισιν τοῦ Νόμου 5/1967.

Ὡσαύτως εὑρίσκομεν ὅτι ἡ ἐν σχέσει πρὸς τὴν ἐγκατάστασιν τοῦ Προέδρου τῆς Δημοκρατίας δοθεῖσα διαβεβαίωσις κατ' ἀνάγκην ἐδόθη ὑπὸ τροποποιημένην μορφὴν δεδομένου ὅτι ἦτο ἐξ ἀντικειμένου ἀδύνατος ἡ ἐν τῇ πράξει λειτουργία τοῦ Συντάγματος ἐν τῇ ὁλότητί του, ὡς ἐκ τῆς ὑφισταμένης ἀνωμαλίας. Ἐν πάσῃ δὲ περιπτώσει δὲν δυνάμεθα νὰ ἀποδεχθῶμεν ὅτι ἡ ὑπὸ τὰς τοιαύτας συνθήκας εὐνόητος παρέκκλισις ἐκ τοῦ κειμένου τῆς ἐν τῷ ἄρθρῳ 42 τοῦ Συντάγματος καθοριζομένης διαβεβαιώσεως δύναται νὰ ὁδηγήσῃ εἰς τὸ συμπέρασμα ὅτι ὁ Πρόεδρος τῆς Δημοκρατίας

δὲν εἶναι ὁ Ἀρχηγὸς τῆς Πολιτείας εἰς ὃν ἀναφέρεται τὸ ἄρθρον 46Α τοῦ Ποινικοῦ Κώδικος.

Τὸ τοιοῦτον ἄρθρον ἀποτελεῖ ἰδιοτύπου φύσεως πρόνοιαν τῆς ὁποίας τὰ πλαίσια εἶναι ἴσως εὐρύτερα ἐκείνων τῶν ἀντιστοίχων προνοιῶν ἐν Ἑλλάδι καὶ ἐν Γαλλίᾳ, εἰς τὰς ὁποίας ἐγένετο ἀναφορά, κατὰ τὴν διάρκειαν τῆς ἀκροάσεως τῆς παρούσης ἐφέσεως, ὑπὸ τῶν συνηγόρων τῶν δύο πλευρῶν. Ἡ κατὰ τὴν γνώμην μας ὀρθὴ ἑρμηνεία τοῦ κειμένου τοῦ ἄρθρου 46Α δὲν προϋποθέτει τὴν ὕπαρξιν οἱασδήποτε προθέσεως ἄλλης ἢ ἐκείνης τῆς πρὸς διάπραξιν τοῦ οἰκείου ἀδικήματος, καί, ἐν προκειμένῳ, δὲν ἀποδεχόμεθα τὴν εἰσήγησιν τῶν συνηγόρων τοῦ ἐφεσείοντος ὅτι τὸ ἀδίκημα τοῦτο διαπράττεται τότε μόνον ὅταν ὑφίσταται πρόθεσις *παρεμβάσεως εἰς τὴν ἐκτέλεσιν τῶν καθηκόντων τοῦ Ἀρχηγοῦ τοῦ* Κράτους ὑπὸ τὴν ἰδιότητά του ὡς Προέδρου τῆς Δημοκρατίας.

Ὡς δὲ ὀρθῶς ἐτόνισεν ὁ πρωτοδίκως ἐκδικάσας τὴν ὑπόθεσιν δικαστὴς ἡ δριμεία κριτικὴ δημοσίων πράξεων πολιτικῶν ἀνδρῶν δὲν ἀποκλείεται μὲν ὑπὸ τοῦ ὡς ἄνω ἄρθρου 46Α, ἀλλὰ εἰς τὴν παροῦσαν περίπτωσιν τὸ κείμενον τοῦ ὑπὸ κρίσιν δημοσιεύματος τοῦ ἐφεσείοντος ὑπερβαίνει τὰ ἀκραῖα ὅρια τῆς τοιαύτης κριτικῆς καὶ ἀποτελεῖ ἐξύβρισιν ἐν τῇ ἐννοίᾳ τοῦ ἄρθρου τούτου.

Δεδομένου δὲ ὅτι ὁ ἐφεσείων οὐδόλως ἠρνήθη τὴν πατρότητα τοῦ τοιούτου δημοσιεύματος εὑρίσκομεν ὅτι ὀρθῶς οὗτος κατεδικάσθη καὶ ἡ ἔφεσις καθ' ὅσον ἀφορᾷ εἰς τὴν ἐνοχὴν του ἀπορρίπτεται.

Ἐν σχέσει πρὸς τὸ θέμα τῆς ἐπιβληθείσης ποινῆς εἴμεθα τῆς γνώμης ὅτι ἂν καὶ ἕκαστος, ἀνεξαρτήτως τῶν πολιτικῶν του πεποιθήσεων, ἔχῃ τὸ δικαίωμα νὰ ἐκφράζῃ δημοσίως τὰς ἀπόψεις του, ἐν τούτοις δέον νὰ τυγχάνουν σεβασμοῦ τὰ ὑπὸ τῶν νόμων καθοριζόμενα πλαίσια καὶ ὅτι δὲν εἶναι νοητὸν νὰ μὴ θεωρῆται ὡς σοβαρὸν ἀδίκημα ἡ ἐξύβρισις τοῦ Ἀρχηγοῦ τῆς Πολιτείας. Εἰδικῶς δέ, ὑπὸ τὸ φῶς τῶν περιστάσεων τῆς ὑποθέσεως, καὶ ἐν ὄψει ἰδίως τοῦ περιεχομένου τοῦ ὑποδίκου δημοσιεύματος, ὀρθῶς ἐπεβλήθη ποινὴ φυλακίσεως εἰς τὸν ἐφεσείοντα. Ἀφ' ἑτέρου αἱ προσωπικαὶ περιστάσεις τοῦ ἐφεσείοντος, ἰδίως δὲ τὸ γεγονὸς ὅτι εἶναι ἡλικίας ἑβδομήκοντα ἐτῶν, μᾶς ὡδήγησαν, οὐχὶ ἄνευ δυσκολίας τινός, εἰς τὸ συμπέρασμα ὅτι ποινὴ στερητικὴ τῆς ἐλευθερίας του, ἔστω καὶ μικροτέρας διαρκείας ἐκείνης τῆς ἐπιβληθείσης τριμήνου φυλακίσεως, ἦτο ἴσως ἀρκετὴ πρὸς κολασμὸν τῆς εἰς τὴν παροῦσαν ὑπόθεσιν παρανομίας καὶ διὰ τοῦτο ἀπεφασίσαμεν νὰ μειώσωμεν τὴν ποινὴν τοῦ ἐφεσείοντος εἰς ἓξ ἑβδομάδων φυλάκισιν ἀπὸ τῆς ἡμέρας τῆς καταδίκης του.

This is an English translation of the Greek text appearing at pp. 125–131, *ante*.

"Law of necessity"—Resort to, and application of, the "law of necessity"—Acts done by deviation from the provisions of the Constitution—The Attorney-General *v.* Ibrahim and Others, 1964 *C.L.R.* 195.

President of the Republic—Investiture of—Affirmation—Article 42 *of the Constitution—Operation in practice of the Constitution in its totality, became impossible due to the existing anomalous situation —Affirmation of faith under Article* 42 *given in an adapted form— But such deviation from the text of the affirmation provided by aforesaid Article* 42 *cannot, in the circumstances, support the conclusion that the President of the Republic is not the Head of State to whom section* 46*A of the Criminal Code, Cap.* 154 *(dealing with the offence of insulting the President of the Republic) is referring* (infra).

House of Representatives—Prolongation by statute (Law) of its five years' term of office after the expiration of such term in August, 1965*—Considering that, due to the anomalous situation prevailing in Cyprus since* 1963*, holding of parliamentary elections became impossible—Such prolongation must be said to have been properly and validly effected by statute* (i.e. *by Law*) *on the basis of "the law of necessity"—And during the period of such prolongation the House of Representatives is empowered to exercise legislative powers not only in case of urgent and unforeseen circumstances, but, generally, in the same manner and to the same extent as before the aforesaid prolongation of its terms of office—It follows that the Criminal Code (Amendment) Law,* 1967 (*Law* 5/1967)*, introducing said section* 46*A of the Criminal Code regarding the offence of insulting the President of the Republic, has been properly and validly enacted* (infra).

Insulting the President of the Republic—Section 46*A of the Criminal Code, Cap.* 154*, as enacted by the aforesaid Criminal Code (Amendment) Law,* 1967 (*Law* 5/1967)*—It does not envisage the existence of any specific intent other than the intent to commit the offence in question—It is, therefore, not correct to say that such offence is committed only when there exists an intention to interfere with the performance of the duties of the Head of State in his capacity as the President of the Republic.*

Insulting the President of the Republic—Section 46*A of the Criminal*

Code, Cap. 154 *(as enacted by said Law* 5/1967*)—Validly enacted—Cf.* supra.

Insulting the President of the Republic—Sentence of three months' imprisonment imposed by the trial Court—In view, however, of the personal circumstances of the Appellant (particularly his advanced age–70 years) a lesser term (six weeks' imprisonment) seems more appropriate—Sentence reduced accordingly to run as from the date of conviction—Appeal against sentence allowed—Appeal against conviction dismissed.

Constitutional Law—"Law of necessity"—Resort to, and application of, "the law of necessity"—Deviation from the provisions of the Constitution, permissible in certain circumstances on the basis of said law of necessity.

Constitutional Law—President of the Republic—Investiture of—Affirmation of faith to the Constitution and the laws—Article 42 *of the Constitution—Deviation from the text of such affirmation as it appears in said Article* 42*—Affirmation of faith to the laws in force for the time being, without any reference to the Constitution—Such deviation does not affect the position and legal status of the President of the Republic.*

The Appellant was convicted by the District Court of Nicosia of the offence of insulting the President of the Republic contrary to section 46(A) of the Criminal Code, Cap. 154, as amended by the Criminal Code (Amendment) Law, 1967 (Law No. 5 of 1967) and sentenced to three months' imprisonment. The Appellant took the present appeal both against conviction and sentence.

It was argued on behalf of the Appellant that:

(1) The President of the Republic is not, lawfully, the Head of State, because on February 28, 1973, when he was invested by the House of Representatives in accordance with Article 42 of the Constitution, he did not affirm faith to the Constitution, but only to the Laws.

(2) The aforesaid Law No. 5 of 1967 (*supra*) establishing the offence of which the Appellant was convicted, is invalid as it was enacted after the expiration (in August 1965) of its normal term of office of five years, and during a period of prolongation by statute of such term which prolonga-

tion was effected contrary to, and in a manner incompatible with, the Constitution.

(3) In any event, such prolongation could not be justified on the basis of the law of necessity, not only because it was not the proper measure, under the circumstances, for ensuring the continuation of the exercise of the legislative power after the expiry of the normal term of office of the House of Representatives, but, also, because there did not exist the preconditions justifying resort to the "law of necessity". More particularly, after the expiry of the normal term of office of the House of Representatives, the argument went on, the "law of necessity" could, if at all, justify only the assumption of its task by the Council of Ministers and the enactment of Laws by means of Orders of the said Council.

(4) In any event, the said section 46A of the Criminal Code, Cap. 154, (*supra*) envisages a specific intent, namely an intent to interfere with the performance of the duties of the Head of State in his capacity as the President of the Republic and the relevant offence cannot, therefore, be committed unless there exists such an intent; and in the absence of any such intent in the present case the trial Court wrongly convicted the Appellant.

The Supreme Court rejecting each one of the said grounds of appeal, upheld the conviction and dismissed the appeal against conviction. Regarding the appeal against the sentence of three months' imprisonment, the Court held that, although such sentence was correctly imposed by the trial Court, it should, however, be reduced to a lesser term (six weeks' imprisonment) due to considerations personal to the Appellant, particularly his old age.

The facts of the case sufficiently appear in the judgment of the Court, dismissing the appeal against conviction, but allowing the appeal against sentence.

Cases referred to:

The Attorney-General v. *Ibrahim and Others*, 1964 C.L.R. 195.

Appeal against conviction and sentence.

Appeal against conviction and sentence by Polycarpos Ioanni-

des who was convicted on the 23rd June, 1973 at the District Court of Nicosia (Criminal Case No. 7529/73) on one count of the offence of insulting the President of the Republic, in his capacity as Head of the State contrary to section 46(A) of the Criminal Code, Cap. 154 as amended by the Criminal Code (Amendment) Law, 1967 (Law 5/67) and was sentenced by Colotas, D.J. to three months' imprisonment.

L. Papaphilippou with *E. Kittis*, for the Appellant.

L. Loucaides, Senior Counsel of the Republic, for the Respondent.

The following judgment was delivered by:-

TRIANTAFYLLIDES, P.: The Appellant was convicted, by the District Court of Nicosia, on June 23, 1973, to three months' imprisonment, on having been found guilty of the offence of insulting, contrary to section 46(A) of the Criminal Code (Cap. 154), as amended by the Criminal Code (Amendment) Law, 1967 (Law 5/67), the President of the Republic, in his capacity as Head of the State.

The present appeal was filed by the Appellant both against his conviction and the sentence passed upon him.

It was contended on behalf of the Appellant that the President of the Republic, whom the Appellant was found to have insulted, is not, lawfully, the Head of the State, because on February 28, 1973, when he was invested by the House of Representatives, in accordance with Article 42 of the Constitution, he did not affirm faith to the Constitution, but only to the Laws.

Counsel for the Appellant argued, further, that Law 5/67 is invalid as it was enacted by the House of Representatives after the expiration, in August 1965, of its normal term of office of five years, and during a period of prolongation of such term which had been, allegedly, effected in a manner incompatible with the Constitution.

It has been submitted, too, that such prolongation could not be justified on the basis of the "law of necessity", not only because it was not the proper, under the circumstances, measure for ensuring the continuation of the exercise of the legislative power after the expiry of the normal term of office of the House of Representatives, but, also, because there did not exist the preconditions justifying resort to the "law of necessity".

It has, moreover, been put forward, in the alternative, that, in any case, the House of Representatives, during its prolonged term of office, could have legislated only in cases of urgent and unforeseen circumstances and that Law 5/67 was not enacted to meet such a situation.

That, and why, especially in view of the nature of our Constitution, it is possible to resort to the "law of necessity" in cases of exceptional circumstances, which cannot be faced within the framework of the relevant constitutional provisions, has been expounded extensively in the judgments delivered by the Supreme Court in the case of *The Attorney-General of the Republic* v. *Mustafa Ibrahim and Others*, 1964 C.L.R. 195; and the Appellant does not dispute that this principle is well settled.

After weighing all relevant considerations we have reached the conclusion that the anomalous situation which existed in Cyprus since 1963, and due to which parliamentary elections could not be held, did render it possible and indispensable to prolong, on the basis of the "law of necessity", the term of office of the House of Representatives, by means of temporary legislative measures; and, thus, there was secured the continuation of the exercise, in all respects, of the legislative power, at all times material to the present case. The bills for the laws prolonging, from time to time, the term of office of the House of Representatives were introduced, each time, on the initiative of the Council of Ministers.

In view, *inter alia*, of the structure of our State, which is based on the principle of the Separation of Powers, we cannot agree with counsel for the Appellant that after the expiry of the normal term of office of the House of Representatives the "law of necessity" could justify only the assumption of its task by the Council of Ministers and the enactment of Laws by means of Orders of the Council.

The prolongation of the term of office of the House of Representatives, having been, in the circumstances, properly effected, its legislative powers could be exercised not only in case of urgent and unforeseen circumstances, but, in the same manner as before such prolongation, and, therefore, no obstacle existed to the enactment of Law 5/67.

Likewise, we find that the affirmation given by the President of the Republic at his investiture had to be given in an adapted

form, in view of the fact that the operation in practice of the Constitution in its totality was impossible due to the existing anomalous situation; and, in any case, we could not accept that, in the circumstances, such a readily appreciated deviation from the text of the affirmation prescribed by Article 42 of the Constitution should lead to the conclusion that the President of the Republic is not the Head of the State to whom section 46A of the Criminal Code refers.

This section is a provision of a special nature, the scope of which is probably wider than that of corresponding provisions in Greece and France, to which reference was made in the course of the hearing of the present appeal by counsel on both sides. In our opinion it cannot be said, on a correct interpretation of section 46A, that it envisages the existence of any specific intent other than an intent to commit the offence in question; and, in this respect, we cannot uphold the submission of counsel for the Appellant that such offence is committed only when there exists an intention to interfere with the performance of the duties of the Head of the State in his capacity as the President of the Republic.

As was correctly stressed by the trial Judge, section 46A does not exclude severe criticism of public acts of political personalities, but in the present instance the text of the *sub judice* article of the Appellant exceeds the extreme limits of such criticism and constitutes an "insult" in the sense of this section.

Thus, as the Appellant has by no means denied writing the article concerned, we find that he was rightly convicted, and so his appeal against conviction has to be dismissed.

Regarding the question of the sentence which was passed upon him, we are of the opinion that though everyone, independently of his political beliefs, has a right to express publicly his views, nevertheless the limits laid down by law in this connection should be observed, and it is not possible not to treat as a serious offence an insult against the Head of the State; in particular, in view of the circumstances of the present case and, especially of the contents of the *sub judice* article, we think that a sentence of imprisonment was correctly imposed on the Appellant. On the other hand, considerations personal to the Appellant and, particularly the fact that he is seventy years old, have led us, not without some difficulty, to the conclusion that a sentence depriving him of his liberty, but for a

shorter period than that of the three months' imprisonment which was imposed on him, was perhaps adequate for the purpose of punishing the violation of the law in the present case, and for this reason we have decided to reduce the sentence passed on the Appellant to one of six weeks' imprisonment as from the date of his conviction.

Appeal against conviction dismissed. Appeal against sentence allowed.