PANTELIS VRAKAS AND ANOTHER,

Applicants,

IN THE MATTER OF APPLICATIONS FOR THE ISSUE OF ORDERS OF HABEAS CORPUS AD SUBJICIENDUM DIRECTED TO THE DIRECTOR OF PRISONS AND THE MINISTER OF JUSTICE OF THE REPUBLIC.

(*Civil Applications* 17/76, 18/76).

Remission of sentence—Article 53.4 of the Constitution—Setting free applicants, while serving a lawful sentence of imprisonment, for purposes of their safety, because of heavy fighting in the area of the prisons—No recommendation to this effect by the Attorney-General under the said Article and no document evidencing a decision by the then Acting President of the Republic to exercise on the date of release the power of remission of sentence under the said Article 53.4—A remission of sentence a formal and solemn act which, because of its nature, has to be evidenced by an appropriate document signed by the President of the Republic—And there being nothing showing that it was not feasible on the date of release, or reasonably soon thereafter, to prepare the necessary documents evidencing the exercise, on the date of release, of the power of remission of sentence, if such a decision had really been taken then, applicants were not granted on that day, or later, a remission of sentence—Invalidity of the course of action, relating to the other prisoners, arising because of the provisions of the Coup D' Etat (Special Provisions) Law, 1975 (Law 57/75) of no avail to the applicants. 5 10 15 20

Habeas corpus—Normally not possible to grant an order of habeas corpus in relation to persons serving a lawful sentence of imprisonment after conviction—It is up to applicants to show that their detention is illegal.

Remission of sentence—Article 53.4 of the Constitution—Court not entitled, on an application for habeas corpus, to examine the sufficiency of the grounds in relation to which the powers under the said Article were or were not exercised, or the validity otherwise of the exercise of such powers. 25

Equality—Principle of equality—There exists no entitlement to equal treatment on an illegal basis.

Administrative Law—Formalities in writing—Need for—Rule that the acts of the Administration should be set out in appropriate documents—Whether it can be relaxed in times of exceptional circumstances.

Equality—Principle of equality—Article 28.1 of the Constitution—Remission of sentence of all convicts—Except those recently convicted of premeditated murder—Amply obvious cause for which to differentiate between applicants who have been convicted of premeditated murder and any other prisoner who has not been so convicted—Principle of equality not contravened.

Both the applicants were convicted by an Assize Court on April 14, 1973, of premeditated murder and sentenced to death; eventually, the death sentences were commuted to life imprisonment by the President of the Republic, under Article 53 of the Constitution, on September 25, 1973.

As a result of the first stage of the Turkish invasion which commenced on July 20, 1974 the applicants, together with the other convicts who were detained at the Central Prisons were released; but the applicants were again detained on August 4, 1974.

Following the bombing of the buildings of the Prisons by the Turkish Air Force, in the course of the second stage of the Turkish invasion, which commenced on August 14, 1974, all those detained at the Prisons, including the applicants, were set free on August 16, 1974. Both applicants were arrested afresh on August 27, 1974 and brought to the prisons in order to serve their sentence.

On August 20, 1974, a letter* was addressed to the Attorney-General of the Republic, by a certain person (O. Antoniou) who was purporting to act, at the time, as the "Director of Prisons" having been so "appointed" by the "Government" which was set up as a result of the *Coup d'etat* of July 15, 1974, wherein he stated, *inter alia*, that for purposes of safety all the Greek convicts were set free and he recommended that "all of them should be granted an amnesty". On this letter there

* See the whole text of the letter at pp. 83 - 84 *post*.

appeared an endorsement in the handwriting of the Attorney-General, dated August 23, 1974 and signed by him which reads as follows:

> "I agree to the remission of the sentences of the above Greek convicts in accordance with article 53.4 of the Constitution, except regarding the convicts who have been lately convicted of premeditated murder". 5

Underneath the above minute there was written the word "approved" and such approval was signed by Mr. Xanthos Clerides, who was at the time acting *pro tempore* as President 10 of the Republic, in view of the simultaneous absence from Cyprus of both the President of the Republic Archbishop Makarios and of the President of the House of Representatives Mr. Glafkos Clerides, who had been acting as President of the Republic. 15

On November 13, 1974, both applicants applied for orders of *habeas corpus ad subjiciendum* but they withdrew their applications on November 2, 1974; and after their efforts and those of their relatives to secure remission of their sentences failed they applied again, by means of the present applications, 20 for orders of *habeas corpus*.

Counsel for the applicants contended:

(a) That the applicants were granted remission of sentence on August 16, 1974;

(b) that the applicants were granted remission of sen- 25 tence by the, at the time, Acting President of the Republic, Mr. Xanthos Clerides, on August 23, 1974;

(c) that the applicants were the victims of unequal treatment; 30

(d) that the exception made in the decision of August 23, 1974, regarding prisoners lately convicted of premeditated murder—namely the applicants—was invalidly made because it was not duly reasoned;

(e) that on August 23, 1974 there were not before the 35 Attorney-General and the Acting President of the Republic certain certificates praising the conduct of the applicants while resisting, together with others, the Turkish invasion.

Counsel further argued by way of a submission in the alternative that on August 23, 1974, Mr. Xanthos Clerides was not acting lawfully as President of the Republic.

It was common ground that in relation to the action taken on August 16, 1974, the Attorney-General of the Republic was not consulted in any way and, consequently, he did not make any recommendation in this respect. Counsel for the applicants contended, in this connection, that in view of the then prevailing exceptional circumstances the need for a favourable recommendation of the Attorney-General could be dispensed with. There was nothing before the Court, however, to show that because of such circumstances the Attorney-General could not have been contacted in order to be consulted. Moreover, there existed no document evidencing a decision, by the then Acting President of the Republic, Mr. Glafkos Clerides, to exercise on August 16, 1974, the powers under Article 53.4.

It was, also, common ground that on August 23, 1974, the applicant Vrakas went through certain formalities which would have been necessary had he been released due to a remission of his sentence; the same did not happen in relation to applicant Tryphonos.

Held, (I) *on the question whether the applicants were granted a remission on August 16, 1974:*

(1) That normally it is not possible to grant an order of *habeas corpus* in relation to a person who is serving a lawful sentence of imprisonment after conviction on indictments; and that in a situation such as that in the present case it would be up to the applicants to show that their detention is *prima facie* illegal, in other words to show, at least *prima facie*, that their sentences have been remitted.

(2) That a remission of sentence under Article 53.4 of the Constitution is a formal and solemn act which, because of its nature, has to be evidenced by an appropriate document signed by the President of the Republic; that the need for a process in writing becomes even more apparent in view of the fact that the decision of the President of the Republic has to be preceded by a recommendation, to that effect, by the Attorney-General; that though the fact that the rule requiring that acts of the administration should be set out in appropriate documents has to be relaxed in times of exceptional circumstances is not overlooked, there is nothing showing that it was not

feasible on August 16, 1974, or reasonably soon thereafter, to prepare the necessary documents evidencing the exercise, on the said date, of the power of remission of sentence under Article 53.4, if such a decision had really been taken then.

(3) That what did, in fact, happen on August 16, 1974, was that the applicants and other prisoners were temporarily set free because there was heavy fighting going on, at the time, in the area of the Central Prisons; and that anything that was done, a few days later, by the prison authorities, in relation to what seemed to be a discharge from the Central Prisons of applicants Vrakas, is of no legal effect whatsoever, because it was done without lawful authority and due to mistaken impressions attributable to the then prevailing confusion.

Held, (II) *on the question whether the applicants were granted remission of sentence by the, at the time, Acting President of the Republic, Mr. Xanthos Clerides, on August 23, 1974:*

(1) That it is clear from the relevant documents that on August 23, 1974, it was decided to remit the sentences of all those Greek Cypriot prisoners who were set free temporarily on August 16, 1974, but that this measure was not applied to those who had been convicted lately of premeditated murder; that the applicants were the persons who were most recently, prior to August 23, 1974, convicted of premeditated murder, and since then, and until the said date, no other persons were so convicted; that, therefore, there can be no doubt at all that the two applicants were excepted from the benefit of the decision taken on August 23, 1974; and that since the applicants were not granted remission of sentence either on August 16, 1974, or, later, on August 23, 1974. it follows that they are still being detained lawfully.

(2) That even if the alternative submission that on August 23, 1974. Mr. Xanthos Clerides was not acting lawfully as President of the Republic were to be found to be correct this would not help the applicants in the least. because, then, in any event, it could not be found that their sentences were validly remitted, as they allege.

(3) That since the applicants were not included in the beneficial effect of the decision of August 23. 1974 and continued to be detained in prison on the strength of their convictions for premeditated murder, the invalidity of the course

of action taken on the said date, which arises because, *inter alia*, of the provisions of the *Coup D' Etat* (Special Provisions) Law, 1975 (Law 57/75), could be of no avail to them.

(4) That the contention of the applicants that they are the victims of unequal treatment is unfounded because there was amply obvious cause for which to differentiate between the applicants and any other prisoner who had not been convicted of the heinous crime of premeditated murder; and that assuming, in the alternative, that the remission granted to the others was granted invalidly for any reason, the principle of equality did not entitle the applicants to be granted, too, in an invalid manner, remission of sentence, because there exists no entitlement to equal treatment on an illegal basis.

(5) That the exception from the remission of those lately convicted of premeditated murder, as framed, contains sufficiently the very obvious reason for which it has been made; and that, in any event, this Court is not entitled, on an application for *habeas corpus*, to examine the sufficiency of the grounds in relation to which the powers under Article 53.4 of the Constitution were or were not exercised, or the validity otherwise of the exercise of such powers.

(6) That the presence of the certificates praising the conduct of the applicants could not have made the slightest difference in relation to the decision to except, from the remission of sentence granted on August 23, 1974, persons who had been lately convicted of premeditated murder, such as the applicants because this exception was made in view of the nature of the crime, and not in the light of the personal circumstances or conduct of any particular prisoner.

Applications dismissed.

Cases referred to:

Re Featherstone, 37 Cr. App. R. 146 at p. 147;

Re Wring and Another [1960] 1 All E.R. 536 at p. 537;

Schmuel v. The Officer in Command, Illegal Jewish Immigrants' Camp, Karaolos, 18 C.L.R. 158;

Voyiazianos v. The Republic (1967) 3 C.L.R. 239;

R. v. Leeds Prison (Governor), Ex parte Stafford [1964] 1 All E.R. 610 at p. 612;

Demetriou and Another v. The Republic, 3 R.S.C.C. 121.

Applications.

Applications for orders directed to the Director of Prisons and the Minister of Justice to show cause why an order or a writ of *habeas corpus ad subjiciendum* should not be issued. 5

A. Pandelides, for the applicants.

Cl. Antoniades, Counsel of the Republic, for the respondents.

Cur. adv. vult.

The following judgment was delivered by:- 10

TRIANTAFYLLIDES, P.: By the present two applications, which were heard together in view of their being closely related to each other, the applicants are seeking orders of *habeas corpus ad subjiciendum.*

It is common ground that—(as it appears, also, from the file of the proceedings)—both the applicants, namely Pantelis Vrakas and Elias Tryphonos, were convicted by an Assize Court in Kyrenia on April 14, 1973, in criminal case No. 1404/72, of the premeditated murder of Paradissa Panteli Vraka, the wife of applicant Vrakas, and they were consequently sentenced to death; eventually, the death sentences were commuted to life imprisonment by the President of the Republic, under Article 53 of the Constitution, on September 25, 1973. 15 20

On November 13, 1974, both the applicants applied (see Civil Applications Nos. 15/74, 16/74) for the first time, for orders of *habeas corpus ad subjiciendum,* through counsel other than the one who appeared for them on the present occasion; such applications were withdrawn on November 22, 1974, when counsel appearing then for them made the following statement:- 25 30

"I had the opportunity to study the cases in the light of the material filed on behalf of the respondents"—the respondents being the Minister of Justice, The Attorney-General and the Director of Prisons—"and on the basis of the information at present in my possession I seek leave to withdraw these applications". 35

The present new applications for orders of *habeas corpus* were filed on June 22, 1976.

Normally, it is not possible to grant an order of *habeas corpus* in relation to a person who is serving a lawful sen-
5 tence of imprisonment after conviction on indictment (see Halsbury's Laws of England, 4th ed., vol. 11, p. 781, para. 1472); in *Re Featherstone*, 37 Cr. App. R. 146, Lord Goddard C.J. said (at p. 147):-

> "The court does not grant, and cannot grant, writs
> 10 of *habeas corpus* to persons who are in execution, that is to say, persons who are serving sentences passed by courts of competent jurisdiction. Probably the only case in which the court would grant *habeas corpus* would be if it were satisfied that the prisoner was
> 15 being held after the term of the sentence passed on him had expired".

The above view was adopted, also, by Lord Parker C.J. in *Re Wring and Another* [1960] 1 All E.R. 536, 537.

Thus, the present applications could not have been pro-
20 ceeded with had it not been for the contention of the applicants that their sentences of life imprisonment have, in effect, expired, because, subsequently, they have been granted remission of sentence under Article 53.4 of the Constitution.

25 The relevant facts, which are relied upon in this respect by applicant Vrakas (in case 17/76), are set out in an affidavit of his dated June 21, 1976, paragraphs 5 to 13 and 15 of which read as follows:-

> "5. Τὴν 20.7.74 καὶ ὥραν 6.30 π.μ. μὲ ἀπέλυσαν ὁμοῦ
> 30 μεθ' ὅλων τῶν εἰς τὰς Κεντρικὰς φυλακὰς κρατουμένων καταδίκων.
>
> 6. 'Αμέσως μετέβην καὶ κατετάγην εἰς τὴν μονάδα μου καὶ ὑπηρέτησα ἀπὸ 20.7.74 μέχρι 4.8.74 λαβὼν μέρος εἰς τὰς μάχας Καραβᾶ-Λαπήθου καὶ Συσκλήπου-
> 35 'Αγριδακίου. Σχετικὸν πιστοποιητικὸν ἐπισυνάπτεται.
>
> 7. Τὴν 4.8.74 εἰδοποιήθην νὰ προσέλθω εἰς Κεντρικὰς Φυλακὰς διὰ νὰ παραλάβω τὰ προσωπικά μου ἀντικείμενα ἀλλὰ μὲ ἐκράτησαν.

8. Τὴν 5.8.74, κατόπιν ἐντολῆς τῆς διευθύνσεως τῶν φυλακῶν ἐστάλην καὶ ἐπήνδρωσα φυλάκια πλησίον τῆς Βρεττανικῆς 'Υπάτης 'Αρμοστείας.

9. Τὴν 16.8.74, λόγω τοῦ βομβαρδισμοῦ τῆς περιοχῆς τῶν Κεντρικῶν, ὁ τότε διοικῶν τὰς Κεντρικὰς Φυλακὰς ἀξιωματικὸς Παρασκευὰς Κύρου (ἀπουσιάζοντος τοῦ διευθυντοῦ) ἔκρινε σκόπιμον τὴν ἀπόλυσιν ὅλων τῶν κρατουμένων ἐπὶ ἰδία εὐθύνη. 5

10. Μετ' ὀλίγον ἐκλήθη ὁ κ. Παρασκευὰς Κύρου εἰς τὸ Προεδρικὸν Μέγαρον ἔνθα ἐξήγησε πρὸς τὸν Προεδρεύοντα τῆς Δημοκρατίας κ. Γλαῦκον Κληρίδην καὶ τὸ ἐκεῖ συγκεντρωμένον 'Υπουργικὸν Συμβούλιον τὰς περιστάσεις ὑπὸ τὰς ὁποίας ἔλαβε τὴν ἀπόφασιν του, ἡ δὲ ἀπόφασις αὕτη ἐνεκρίθη καὶ/ἢ ἐπεκυρώθη ὑπὸ τοῦ Προεδρεύοντος καὶ τοῦ 'Υπουργικοῦ Συμβουλίου, ἀπεφασίσθη δὲ ὅπως χορηγηθῆ εἰς ἅπαντας τοὺς καταδίκους χάρις καὶ/ἢ οὗτοι ἀπολυθοῦν ἐπὶ σκοπῷ ἀπονομῆς χάριτος. 10 15

11. 'Εγὼ παρέμεινα ἐπανδρώνων τὰ φυλάκια μέχρι τῆς 17.8.74. 20

12. Διὰ τὴν ὅλην δρᾶσιν μου καὶ διαγωγήν μου κατὰ τὴν διάρκειαν τῶν μαχῶν εἰς τὰς Κεντρικὰς Φυλακὰς ὁμιλεῖ τὸ ἐπισυναπτόμενον πιστοποιητικὸν τῶν διοικητῶν μου τοῦ λόγου καὶ τοῦ φυλακίου.

13. Τὴν 23.8.74 καὶ συμφώνως τῆς ληφθείσης ἤδη ἀποφάσεως ἀπελύθην ἐπισήμως ἐκ τῶν φυλακῶν, ἀφοῦ ὑπέγραψα εἰς διάφορα βιβλία καὶ ἔλαβα τὰ χρήματα μου τὰ ὁποῖα εἶχα. τὰ ροῦχα μου καθὼς καὶ τὸ πιστοποιητικὸν τῶν κοινωνικῶν ἀσφαλίσεων τὸ ὁποῖον λαμβάνει ὁ φυλακισμένος ὅταν ἀπολύεται. 25 30

15. Τὴν 27.8.74 ἐπέστρεψα εἰς Κεντρικὰς Φυλακὰς διὰ νὰ λάβω τὸ ἀπολυτήριον μου τοῦ στρατοῦ τὸ ὁποῖον ἐλησμόνησα ἐκεῖ καὶ μὲ ἐκράτησαν".

("5. On 20.7.74 and at 6.30 a.m. I was released together with all other convicts who were detained at the Central Prisons. 35

6. I went at once and enlisted at my unit and I

served from 20.7.74 till 4.8.74, having taken part in the battles of Karavas-Lapithos and of Sisklipos-Agridaki. A relevant certificate is attached.

7. On 4.8.74 I was notified to go to the Central Prisons in order to collect my personal belongings, but they detained me there.

8. On 5.8.74 on the instructions of the prison authorities I was sent to man military outposts near the British High Commission.

9. On 16.8.74 because of the bombing of the area of the Central Prisons, the then officer in charge of the Central Prisons, Paraskevas Kyrou (the Director being away) deemed expedient the release of all the prisoners, on his own responsibility.

10. After a while Mr. Paraskevas Kyrou was called to the Presidential Office where he explained to the Acting President of the Republic Mr. Glafkos Clerides and to the Council of Ministers, who were gathered there, the circumstances in which he took his decision, and such decision was approved and/or ratified by the Acting President and by the Council of Ministers, and it was decided to grant remission of sentence to all the convicts and/or that they should be released with a view to being granted remission of sentence.

11. I remained manning the military outposts till the 17.8.74.

12. The attached certificate of the commanding officers of my company and of my outpost describes my actions and conduct during the fighting at the Central Prisons.

13. On 23.8.74, and in pursuance to the already taken decision, I was formally released from the prison and, having signed in various books, I received my money, my clothes as well as the social insurance certificate, which a prisoner receives on his release.

15. On 27.8.74 I returned to the Central Prisons

in order to collect my army discharge certificate, which I had forgotten there, and I was detained".).

The corresponding paragraphs of an affidavit sworn by applicant Tryphonos (in case 18/76) on June 21, 1976, are paragraphs 5 to 10, and they read as follows:- 5

("5. Τὴν 20.7.74 καὶ ὥραν 6.30 π.μ. μὲ ἀπέλυσαν ὁμοῦ μεθ' ὅλων τῶν εἰς τὰς Κεντρικὰς Φυλακὰς κρατουμένων καταδίκων.

6. Μετὰ τὴν ἀπόλυσιν μου ἐπανήρχισα τὴν ἐργασίαν μου. 10

7. Τὴν 4.8.74 εἰδοποιήθην νὰ ἐπιστρέψω εἰς τὰς Κεντρικὰς Φυλακὰς ἔνθα καὶ παρέμεινα μέχρι τὴν 16.8.74.

8. Τὴν 16.8.74 λόγω τοῦ βομβαρδισμοῦ τῆς περιοχῆς τῶν Κεντρικῶν Φυλακῶν, ὁ τότε διοικῶν τὰς Κεν- 15 τρικὰς Φυλακὰς ἀξιωματικὸς Παρασκευὰς Κύρου (ἀπουσιάζοντος τοῦ διευθυντοῦ) ἔκρινεν σκόπιμον τὴν ἀπόλυσιν ὅλων τῶν κρατουμένων ἐπὶ ἰδίᾳ εὐθύνη.

9. Μετ' ὀλίγον ἐκλήθη ὁ Παρασκευὰς Κύρου εἰς τὸ Προεδρικὸν Μέγαρον ἔνθα ἐξήγησε πρὸς τὸν Προε- 20 δρεύοντα τῆς Δημοκρατίας κ. Γλαῦκον Κληρίδην καὶ τὸ ἐκεῖ συγκεντρωμένον Ὑπουργικὸν Συμβούλιον τὰς περιστάσεις ὑπὸ τὰς ὁποίας ἔλαβε τὴν ἀπόφασιν του, ἡ δὲ ἀπόφασις αὐτὴ ἐνεκρίθη καὶ/ἢ ἐπεκυρώθη ὑπὸ τοῦ Προεδρεύοντος καὶ τοῦ Ὑπουργικοῦ Συμβουλίου, ἀπεφα- 25 σίσθη δὲ ὅπως χορηγηθῇ εἰς ἅπαντας τοὺς καταδίκους χάρις καὶ/ἢ οὗτοι ἀπολυθοῦν ἐπὶ σκοπῷ χάριτος.

10. Τὴν 26.8.74 προσῆλθον εἰς τὰς Κεντρικὰς Φυλακὰς διὰ νὰ παραλάβω τὰ προσωπικά μου ἀντικείμενα 30 ἀλλὰ μὲ ἐκράτησαν μέχρι σήμερον".).

("5. On 20.7.74 and at 6.30 a.m. I was released together with all other convicts who were detained at the Central Prisons.

6. After my release I resumed my work. 35

7. On 4.8.74 I was notified to return to the Central Prisons where I stayed till the 16.8.74.

8. On 16.8.74 because of the bombing of the area of the Central Prisons, the then officer in charge of the Central Prisons, Paraskevas Kyrou (the Director being away) deemed expedient the release of all
5 prisoners on his own responsibility.

9. After a while Mr. Paraskevas Kyrou was called to the Presidential Office where he explained to the Acting President of the Republic Mr. Glafkos Clerides and to the Council of Ministers, who were
10 gathered there, the circumstances in which he took his decision, and such decision was approved and/or ratified by the Acting President of the Republic and by the Council of Ministers, and it was decided to grant remission of sentence to all convicts and/or
15 that they should be released with a view to being granted remission of sentence.

10. On 26.8.74 I went to the Central Prisons to collect my personal belongings but I am being detained there until today".).

20 By means of affidavits filed in opposition to the present applications it is denied that the sentences of life imprisonment, which are being served by the applicants, were remitted as it is being alleged by them, and it is contended that they are being lawfully detained in execution of such
25 sentences. The said affidavits are sworn by counsel for the Republic Mr. A. Evangelou, the Director of the Central Prisons Mr. C. Christou, and Chief Superintendent of Prisons Charalambos Spyrou. It is useful to quote paragraphs 1 to 4 of the affidavit of Chief Superintendent Spyrou
30 (dated July 23, 1976, and filed in case 17/76) which read as follows:-

"1. Εἶμαι ὑπεύθυνος διὰ τὴν ἀσφαλῆ φύλαξιν καὶ μεταχείρισιν ἁπάντων τῶν εἰς τὰς Φυλακὰς κρατουμένων συμπεριλαμβανομένου καὶ τοῦ αἰτητοῦ.

35 2. Τὴν 4.8.1974 ὁ αἰτητής, ὅστις ὡς πληροφοροῦμαι, εἶχεν ἀφεθῆ ἐλεύθερος τὴν 20.7.1974, ἐπανεσυνελήφθη καὶ μετεφέρθη κατὰ τὴν ἰδίαν ἡμερομηνίαν εἰς τὰς Φυλακὰς ἵνα ἐκτίσῃ τὴν νομίμως ἐπιβληθεῖσαν εἰς αὐτὸν ποινήν.

40 3. Τὴν 16.8.1974 τὰ κτίρια τῶν Φυλακῶν ἐβομβαρ-

δίσθησαν ἀνηλεῶς ὑπὸ τῆς Τουρκικῆς 'Αεροπορίας καὶ ὡς ἐκ τούτου ἐθεωρήθη σκόπιμον ὅπως ἅπαντες οἱ εἰς τὰς Φυλακὰς κρατούμενοι, συμπεριλαμβανομένου καὶ τοῦ αἰτητοῦ, ἀφεθῶσι ἐλεύθεροι διὰ λόγους ἀσφαλείας τῶν ἰδίων καὶ οὕτω ἐγένετο. 5

4. Τὴν 27.8.1974 ὁ αἰτητὴς συνελήφθη ἐκ νέου καὶ μετεφέρθη εἰς τὰς φυλακὰς ἔνθα κρατεῖται μέχρι σήμερον πρὸς ἔκτισιν τῆς ποινῆς του".

("1. I am responsible for the safe custody and treatment of all those who are detained at the Prisons, including the applicant. 10

2. On 4.8.1974 the applicant, who, as I am informed, had been set free on 20.7.1974, was re-arrested and brought on the same date to the Prisons in order to serve the sentence which was lawfully imposed on him. 15

3. On 16.8.1974 the buildings of the Prisons were mercilessly bombed by the Turkish Air Force and as a result it was deemed expedient to set free, for their safety, all those detained at the Prisons, including the applicant, and it was done so. 20

4. On 27.8.1974 the applicant was arrested afresh and brought to the Prisons where he is being detained till today in order to serve his sentence".).

The corresponding paragraphs of an affidavit sworn by the same affiant on the same date and filed in case 18/76 are practically identical and need not be quoted in this judgment. 25

It is common ground that on August 23, 1974, applicant Vrakas went through certain formalities which would have been necessary had he been released due to a remission of his sentence; the same did not happen in relation to applicant Tryphonos. It is the contention of the respondents that what took place, as aforesaid, in relation to applicant Vrakas, was not in consequence of a remission of the remainder of his sentence of life imprisonment, but was the result of the confusion prevailing in Cyprus at the time due to the tragic events of July and August 1974, namely the abortive *coup d' etat* of July 15, 1974, and the Turkish invasion of Cyprus, which took place in two 30 35 40

stages, commencing on July 20, 1974, and August 14, 1974, respectively.

On August 20, 1974, a letter was addressed to the Attorney-General of the Republic, by a certain person (O. 5 Antoniou) who was purporting to act, at the time, as the "Director of Prisons", having been so "appointed" by the "Government" which was set up as a result of the *coup d' etat*. The lawfully in office Director of Prisons, Mr. C. Christou, had been removed illegally from his post after 10 the *coup d' etat*, and he did not resume his duties till September 10, 1974.

The said letter of August 20, 1974 (*exhibit* 1) reads as follows:-

"Γενικὸν Εἰσαγγελέα
15 Τῆς Δημοκρατίας.

Ὡς γνωρίζετε αἱ ἐπιθέσεις τῶν Τούρκων ἐναντίον τῶν Φυλακῶν ἐπανελήφθησαν μὲ σφοδρότητα τὴν 14.8. 1974 καὶ ἐκορυφώθησαν τὴν 16.8.1974 μὲ βομβαρδισμοὺς καὶ πυροβολισμοὺς ἀπὸ ἀέρος, προξενήσαντες 20 σοβαροτάτας καταστροφάς.

Χάριν ἀσφαλείας ὅλοι οἱ Ἕλληνες κατάδικοι καὶ ὑπόδικοι ἀφέθησαν ἐλεύθεροι, σχεδὸν ὅλοι δὲ ἐθελοντικῶς ἐχρησιμοποιήθησαν εἰς προκεχωρημένα φυλάκια διὰ τὴν ἀπόκρουσιν τῶν Τουρκικῶν ἐπιθέσεων δι' ὅλμων 25 καὶ ἄλλων ὅπλων ἀπὸ τοῦ ἐδάφους. Ἄλλοι ἐχρησιμοποιήθησαν διὰ τὴν μεταφορὰν τραυματιῶν, τὴν τροφοδοσίαν κλπ. Μερικοὶ ἐκ τῶν τροφίμων ἐπέδειξαν ἀπαράμιλλον θάρρος καὶ τόλμην ὅλοι δὲ ἀπόλυτον πειθαρχίαν.

Εἶμαι βέβαιος ὅτι θὰ συμφωνήσητε ὅπως ὅλοι τύχουν 30 ἀμνηστίας. Δὲν νομίζω ὅτι εἶναι ὀρθὸν ὅπως οὗτοι ἀνακληθοῦν εἰς τὰς Φυλακάς. Μερικοὶ ὑπηρετοῦν ἀκόμη εἰς τὰ φυλάκια τῶν Φυλακῶν πολλοὶ δὲ ἀπέστειλαν βεβαιώσεις ὅτι ὑπηρετοῦν εἰς διάφορα Τάγματα τῆς Ἐθνικῆς Φρουρᾶς.

35 Εἰς τὰς Φυλακὰς ὑπάρχουν σήμερον (3) τρεῖς Τοῦρκοι κατάδικοι ἐκ τῶν ὁποίων ὁ εἷς, ἂν καὶ ἀπολυθεὶς δὲν ἠθέλησε νὰ μεταβῇ εἰς τὸν Τουρκικὸν Τομέα, (5) πέντε κρατούμενοι συλληφθέντες ὑπὸ τῆς Ἀστυνομίας ὡς ὕποπτοι καὶ δύο (2) αἰχμάλωτοι.

Οἱ ἀποδράσαντες κατὰ τὴν ἡμέραν τοῦ πραξικοπήματος 19 Τοῦρκοι κατάδικοι παραμένουν βεβαίως ἀσύλληπτοι".

("Attorney-General
of the Republic. 5

As you know the attacks by the Turks against the Prisons were resumed with severity on 14.8.1974 and reached their climax on 16.8.1974 with bombings and machinegunning by planes, causing extensive damage. 10

For purposes of safety all the Greek convicts and those awaiting trial were set free, and almost all of them were used with their consent at forward outposts in order to repulse Turkish attacks with mortars and other ground weapons. Others were used for 15 the transportation of the wounded, of food supplies etc. Some of the detainees showed incomparable courage and daring and all of them behaved in an absolutely disciplined manner.

I am certain that you will agree that all of them 20 should be granted an amnesty. I do not think that it is right to re-call them to the Prisons. Some of them are still serving at the outposts of the Prisons and many of them have sent in certificates that they are serving at various Battalions of the National Guard. 25

At the Prisons there are to be found today (3) three Turkish convicts, one of whom, though released, did not choose to go to the Turkish sector, (5) five detainees arrested by the Police as suspected persons, and two (2) prisoners of war. 30

The 19 Turkish convicts who escaped on the date of the *coup d' etat* continue, of course, to remain unapprehended".).

On this letter there appears an endorsement in the handwriting of the Attorney-General, dated August 23, 1974, 35 and signed by him; it reads as follows:-

"Συμφωνῶ διὰ μείωσιν τῆς ποινῆς τῶν ἀνωτέρω Ἑλλήνων κατοδίκων συμφώνως πρὸς τὸ ἄρθρον 53.4 τοῦ

Συντάγματος πλὴν τῶν καταδίκων διὰ φόνον ἐκ προμελέτης ἐσχάτως καταδικασθέντων".

1977
Febr. 8
—
IN RE
PANTELIS
VRAKAS
AND ANOTHER

("I agree to the remission of the sentences of the above Greek convicts in accordance with article 53.4
5 of the Constitution, except regarding the convicts who have been lately convicted of premeditated murder".).

Underneath there is written the word "ἐγκρίνεται" ("approved"), and such approval is signed by Mr. Xanthos
10 Clerides, who was, at the time, acting *pro tempore* as President of the Republic, in view of the simultaneous absence from Cyprus of both His Beatitude the President of the Republic Archbishop Makarios and of the President of the House of Representatives Mr. Glafkos Clerides, who,
15 as already stated, had been acting as President of the Republic.

On August 23, 1974, the Attorney-General replied as follows to the letter of August 20, 1974:-

"Διευθυντὴν Φυλακῶν,

20 Εἰς ἀπάντησιν ἐπιστολῆς σας ὑπ' ἀριθμὸν 307/3 τῆς 20 Αὐγούστου 1974 σᾶς πληροφορῶ ὅτι κατόπιν συνεννοήσεως μετὰ τοῦ Ὑπουργοῦ Δικαιοσύνης συνέστησα δυνάμει τοῦ ἄρθρου 53.4 τοῦ Συντάγματος τὴν μείωσιν τῆς ἐπιβληθείσης ποινῆς εἰς τοὺς ἐν τῇ ἐπιστολῇ σας ἀ-
25 ναφερομένους καταδίκους καὶ ὁ Προεδρεύων τῆς Δημοκρατίας ἀπεδέχθη τὴν σύστασιν μου ταύτην ὥστε οὗτοι νὰ θεωρῶνται ὡς ἀποφυλακισθέντες τῆς 16 Αὐγούστου 1974.

Νοεῖται ὅτι εἰς τοὺς καταδίκους τούτους δὲν περιλαμ-
30 βάνονται οἱ ἐσχάτως καταδικασθέντες διὰ φόνον ἐκ προμελέτης καὶ ἐκτίοντες ποινὴν φυλακίσεως".

("Director of Prisons,

In reply to your letter No. 307/3 of August 20, 1974, I inform you that in consultation with the Mi-
35 nister of Justice I recommended under Article 53.4 of the Constitution the remission of the sentences imposed on those convicts referred to in your letter and the Acting President of the Republic accepted this recommendation of mine, so that they can be consi-

dered as released from prison as from August 16, 1974.

It is to be understood that in such convicts are not included those who have been lately convicted of premeditated murder and are serving sentences of imprisonment".). 5

It may be added, at this stage, that, as it appears from the material before me, applicant Vrakas applied on February 28, 1976, for remission of sentence; and earlier on his mother had made similar applications on September 28, 1974, and October 7, 1974. Likewise applicant Tryphonos applied on March 1, 1976, for remission of sentence; and earlier on his daughter had made similar applications on October 14, 1974, and October 25, 1974. All these applications were refused. It appears that after the above efforts of the applicants, and of their relatives, to secure remission of their sentences failed, they applied again to this Court for orders of *habeas corpus*. 10 15

In both the present cases there have been filed formal returns to the applications for *habeas corpus*, stating the reasons for which the continued detention in prison of the applicants is regarded as lawful; and, normally, these being instances in which the returns establish that the applicants are being held in prison in execution of sentences of imprisonment, after conviction on indictment, it would not have been open to the applicants to controvert the returns (see Halsbury's, *supra*, p. 794, para. 1499); but, as already mentioned, on the present occasion the Court is faced with a rather special problem inasmuch as the applicants contend that their sentences have been remitted. 20 25 30

I am of the view that in a situation such as that in the present cases (and see, in this respect, *inter alia, Schmuel v. The Officer in Command, Illegal Jewish Immigrants' Camp, Karaolos*, 18 C.L.R. 158, 164) it would be up to the applicants to show that their detention is *prima facie* illegal, in other words to show, at least *prima facie*, that their sentences have been remitted. Having said this—by way of a statement of what I regard to be a relevant principle—I should add that in the circumstances of the present cases I did not have to make any finding against the applicants merely because I was not satisfied that they 35 40

have failed to discharge any onus cast on them, and all my conclusions, which follow hereinafter in the present judgment, have been reached with certainty, beyond any reasonable doubt, on the basis of all the material, as a whole, which has been placed before me.

I shall deal first with the issue of whether on August 16, 1974, the applicants were granted, together with the other prisoners who were set free on that date, remission of sentence under Article 53.4 of the Constitution; and it is not in dispute that such remission could not have been validly granted except under the said constitutional provision.

Article 53.4 reads as follows:-

> "The President and the Vice-President of the Republic shall, on the unanimous recommendation of the Attorney-General and the Deputy Attorney-General of the Republic, remit, suspend, or commute any sentence passed by a court in the Republic in all other cases".

"Other cases" in the above provision means all cases other than those in which there arises the question of the exercise of the prerogative of mercy with regard to persons condemned to death.

Due to constitutional difficulties which have been prevailing in Cyprus since 1963, it has turned out that Article 53.4 had to be applied, at the time, in a manner rendering it inoperative in so far as were concerned any references therein to the "Vice-President of the Republic" and the "Deputy Attorney-General of the Republic".

It is common ground that in relation to the action taken on August 16, 1974, the Attorney-General of the Republic was not consulted in any way and. consequently, he did not make any recommendation whatsoever in this respect. It has been contended, indeed. that in view of the then prevailing exceptional circumstances the need for a favourable recommendation of the Attorney-General could be dispensed with, but there is nothing before me to show that because of such circumstances he could not have been contacted in order to be consulted.

Furthermore, there does not exist any document evi-

dencing a decision, by the then Acting President of the Republic, Mr. Glafkos Clerides, to exercise, on August 16, 1974, the powers under Article 53.4.

A remission of sentence under the said Article is a formal and solemn act which, because of its nature, has to 5 be evidenced by an appropriate document signed by the President of the Republic; and the need for a process in writing becomes even more apparent in view of the fact that the decision of the President of the Republic has to be preceded by a recommendation, to that effect, by the 10 Attorney-General. I do not overlook the fact that the rule requiring that acts of the administration should be set out in appropriate documents has to be relaxed in times of exceptional circumstances, but there is nothing showing that it was not feasible on August 16, 1974, or reasonably 15 soon thereafter, to prepare the necessary documents evidencing the exercise, on the said date, of the power of remission of sentence under Article 53.4, if such a decision had really been taken then—(regarding, generally, the need for formalities in writing see, *inter alia*, Στασινοπού- 20 λου Δίκαιον Διοικητικῶν Πράξεων (1951) p. 210, and Κυριακοπούλου Ἑλληνικὸν Διοικητικὸν Δίκαιον, 4th ed., vol. B, pp. 380, 381).

I have no doubt, whatsoever, that what did, in fact, happen on August 16, 1974, was that the applicants and 25 other prisoners were temporarily set free because there was heavy fighting going on, at the time, in the area of the Central Prisons; and that anything that was done, on a few days later, by the prison authorities, in relation to what seemed to be a discharge from the Central Prisons 30 of applicant Vrakas, is of no legal effect whatsoever, because it was done without lawful authority and due to mistaken impressions attributable to the then prevailing confusion.

There remains to be examined, next, the contention 35 that the applicants were granted remission of sentence by the, at the time, Acting President of the Republic, Mr. Xanthos Clerides, on August 23, 1974.

It is clear from the relevant document, *exhibit* 1, that on August 23, 1974, it was decided to remit the sentences 40 of all those Greek Cypriot prisoners who were set free

temporarily on August 16, 1974, but that this measure was not applied to those who had been convicted lately of premeditated murder; and, as it appears from the material before me (see, *inter alia,* the affidavits filed in these cases 5 by Mr. Christou, the Director of Prisons) the applicants were the persons who were most recently, prior to August 23, 1974, convicted of premeditated murder, and since then, and until the said date, no other persons were so convicted. Thus, there can be no doubt at all that the two 10 applicants were excepted from the benefit of the decision taken on August 23, 1974.

As I have not found that the applicants were granted remission of sentence either on August 16, 1974, or, later, on August 23, 1974, it follows that they are still being de-15 tained lawfully.

It has been argued by counsel for the applicants, by way of a submission in the alternative, that on August 23, 1974, Mr. Xanthos Clerides was not acting lawfully as President of the Republic. It suffices to say that even if 20 this contention were to be found to be correct this would not help the applicatnts in the least, because, then, in any event, it could not be found that their sentences were validly remitted, as they allege. In this respect it must not be lost sight of that they are not being detained merely be-25 cause they were excluded from the ambit of the decision taken under Article 53.4 of the Constitution by Mr. Xanthos Clerides on August 23, 1974, but because of their convictions of the offence of premeditated murder, as already explained earlier on in this judgment.

30 Also, I do not see how it can be of any relevance to the claim of the applicants the fact that the action taken on August 23, 1974, in relation to other prisoners, was initiated and implemented, by way of execution (and without, of course, the exercise of any discretionary power on 35 his part) by the aforementioned O. Antoniou, who was purporting to act, at the time, as Director of Prisons, having been so "appointed" by the "Government" which resulted from the *coup d' etat*, and whose actions are definitely of no legal consequence whatsoever, because, *inter* 40 *alia*, of the provisions of the *Coup D' Etat* (Special Provisions) Law, 1975 (Law 57/75). Since the applicants were not included in the beneficial effect of the decision of

August 23, 1974, and, therefore, continued to be detained in prison on the strength of their convictions for premeditated murder, I fail to see how any invalidity of the course of action taken on the said date could be of any avail to them. 5

The further contention of the applicants that they are victims of unequal treatment is, in my opinion, unfounded because there was amply obvious cause for which to differentiate between the applicants and any other prisoner who had not been convicted of the heinous crime of pre- 10 meditated murder. Assuming, in the alternative, that the remission granted to the others was granted invalidly, for any reason, the principle of equality did not entitle the applicants to be granted, too, in an invalid manner, remission of sentence, because there exists no entitlement to 15 equal treatment on an illegal basis (see, *inter alia, Voyiazianos v. The Republic,* (1967) 3 C.L.R. 239).

It has been submitted, also, on behalf of the applicants, that the exception made in the decision of August 23, 1974, regarding prisoners lately convicted of premeditated 20 murder—namely the applicants—was invalidly made because it is not duly reasoned. I do think that such exception, as framed, contains sufficiently the very obvious reason for which it has been made. But, in any case, I am of the view that I am not entitled, on an application for 25 *habeas corpus,* to examine the sufficiency of the grounds in relation to which the powers under Article 53.4 of the Constitution were or were not exercised, or the validity otherwise of the exercise of such powers (see, *inter alia,* Basu's Commentary on the Constitution of India, 5th ed., 30 vol. 2 p. 409, *R. v. Leeds Prison (Governor), Ex parte Stafford,* [1964] 1 All E.R. 610, 612, and, by analogy, our own case of *Demetriou and Another v. The Republic,* 3 R.S.C.C. 121).

Lastly it has been submitted, that on August 23, 1974, 35 there were not before the Attorney-General and the Acting President of the Republic certain certificates praising the conduct of the applicants while resisting, together with others, the Turkish invasion. I do not think that such a consideration could have made the slightest difference in 40 relation to the decision to except, from the remission of sentence granted on August 23, 1974, persons who had

been lately convicted of premeditated murder, such as the applicants; this exception was made in view of the nature of the crime, and not in the light of the personal circumstances or conduct of any particular prisoner. But, in any
5 case, in the letter of August 20, 1974 (*exhibit* 1) it was stated in respect of all temporarily released prisoners, including obviously the applicants, that they had rendered valuable services by fighting against the Turkish invaders.

For all the foregoing reasons I find no merit in these
10 two applications for orders of *habeas corpus*.

Before concluding this judgment I should add that in view of my already stated conclusions I have not proceeded to determine any other issues raised in the present proceedings, because even if they had been decided in
15 favour of the applicants there could not have been changed the outcome of such proceedings; likewise, I did not find it necessary to decide on the preliminary objection, of counsel for the respondents, that once the applicants had applied earlier for orders of *habeas corpus* and they
20 had withdrawn such applications, they could not now apply, again, for such orders.

In the result these applications are dismissed, but without any order as to costs.

Applications dismissed.
25 *No order as to costs.*