1979 July 30

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MICHAEL VEIS AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(*Cases Nos.* 34/79, 35/79, 36/79, 37/79, 40/79, 41/79, 42/79, 43/79, 44/79 and 45/79).

Administrative Law—Executory act—Interdiction of educational officers under section 74(1) *of the Public Educational Service Law,* 1969 (*Law* 10/69)—*Amounts to administrative action which has all the essential attributes of an executory decision which can be challenged by recourse under Article* 146 *of the Constitution— And which while it lasts affects adversely and directly existing legitimate interests of the applicants in the sense of paragraph* 2 *of the said Article.* 5

Disciplinary Proceedings—Set in motion under the Certain Disciplinary Offences (*Conduct of Investigation and Adjudication*) *Laws* 1977 *to* 1978 (*Laws* 3/77, 38/77 *and* 12/78)—*And the Certain Disciplinary Offences* (*Conduct of Investigation and Adjudication*) *Laws* 1977 *to* 1978, *Suspension of Proceedings Law,* 1978 (*Law* 57/78)— *Power of interdiction remained, by virtue of section* 3(3) *of Law* 3/77, *with the Council of Ministers and not with the various Appropriate Authorities under the relevant Laws*—Sub Judice *interdictions annulled but execution of judgment stayed for six weeks during which an appeal may be made against it, so as to preserve the existing position while both sides will be considering such an eventuality—Rule* 19 *of the Supreme Constitutional Court Rules and section* 47 *of the Courts of Justice Law,* 1960 (*Law* 14/60). 10 15 20

Disciplinary offences—Interdiction—Nature of interdiction as a measure resorted to as a result of disciplinary proceedings.

Words and phrases—"Interdiction"—"Δυνητική ἀργία"—("*Discretionary interdiction*").

5 *Administrative Law—Judgment in a recourse for annulment—Stay of execution of for the period of six weeks during which an appeal may be made against it, so as to preserve the existing position while both sides will be considering such an eventuality—Rule* 19 *of the Supreme Constitutional Court Rules and section* 47 *of the* 10 *Courts of Justice Law,* 1960 (*Law* 14/60).

Status—Construction—Preamble—Whether it may be used as an aid to construction—Construction of section 3 *of the Certain Disciplinary Offences* (*Conduct of Investigation and Adjudication*) *Laws* 1977 *to* 1978; *Suspension of Proceedings Law,* 1978 (*Law* 57/78).

15 On November 2, 1978, the Council of Ministers, acting under section 4* of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978, Suspension of Proceedings Law, 1978 (Law 57/78)**, decided to remit to the appropriate authority, under the relevant Law, for further 20 investigation or adjudication, as the case might be, a number of cases of public officers, including educationalists among whom were the applicants in these recourses; and on November 9, 1978, the Minister of Education informed the respondent Committee that there were being examined in relation to the 25 educationalists, mentioned in the above decision of the Council of Ministers, disciplinary offences coming within the ambit of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws, 1977 to 1978. On November 9, 1978, the respondent Committee, acting under section 74(1)*** of the 30 Public Educational Service Law, 1969 Law 10/69) decided to interdict the applicants as from November 11, 1978; and hence these recourses.

The "Laws 1977 to 1978" referred to in the title of Law 57/78, *supra*, are the Certain Disciplinary Offences (Conduct of Investi-35 gation and Adjudication) Law, 1977 (Law 3/77), the Certain

* Quoted at pp. 400–401 *post*.

** The whole text of Law 57/78 is quoted at pp. 399-403 *post*.

*** Quoted at pp. 404–405 *post*.

Disciplinary Offences (Conduct of Investigation and Adjudication) (Amendment) Law, 1977 (Law 38/77), and the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) (Amendment) Law, 1978 (Law 12/78).

In the cases of all the applicants the investigations as regards the complaints against them had commenced—and in relation to eight of them had already been completed—prior to the remitting of their cases as above to the Ministry of Education and through it to the respondent Committee. 5

Counsel for the applicants mainly contended that the respondent Committee did not possess, in the circumstances, the competence to interdict them. 10

Section 3 of Law 57/78 and subsection 3 of section 3 of Law 3/77 (as added by means of section 2(b) of Law 38/77) read as follows: 15

" 3. The procedure for the conduct of investigation and adjudication of offences provided by the Laws is suspended as from the appointed date".

"3(3) On referring a complaint to the Committee for investigation under subsection (2) the Minister is empowered to ask the Council of Ministers, if the public interest so requires, to interdict the officer during the investigation and until the final disposal of the case and the Council of Ministers is empowered to interdict the officer, in which case the provisions of section 89* of the Public Service Law, 1967, shall be applicable mutatis mutandis". 20 25

Held, (1) *on the question whether the interdiction is an executory act which can be made the subject matter of a recourse under Article* 146 *of the Constitution:*

(1) That interdiction, under section 74 of Law 10/69, corresponds, primarily, to what is described by Stasinopoulos on Discourses on Administrative Law 1957 pp. 344, 350-353, as "δυνητική ἀργία" ("discretionary interdiction"), which has to be distinguished from compulsory interdiction and inter- 30

* It being obvious that "section 89" was a misprint it was corrected by the Court so as to read "section 84" (see Craies on Statute Law, 7th ed. p. 521).

diction due to circumstances for which the public officer concerned cannot be held to be responsible, such as abolition of his post or illness.

(2) That there can be no doubt that the interdiction of the applicants in the present cases amounts to administrative action which has all the essential attributes of an executory decision which can be challenged by recourse under Article 146 of the Constitution, and which, while it lasts, affects adversely and directly existing legitimate interests of the applicants, in the sense of paragraph 2 of the said Article 146; and that, therefore, the objection of counsel for the respondent Committee that the applicants in the present cases cannot challenge directly, by a recourse under Article 146, the *sub judice* decision to interdict them cannot be sustained (pp. 405–406 *post*).

Held, (II) *on the merits of the recourses*:

(1) That in construing the provisions of a particular statute the Court may have recourse to its preamble; that as it is clearly stated in the preamble to Law 57/78, the purpose for which it was enacted was to expedite the investigation and adjudication in relation to the aforementioned disciplinary offences as there had occurred considerable delay in this connection; that in the light of the preamble to Law 57/78, it cannot be held that it was the intention of the Legislator, when enacting section 3 of Law 57/78, to suspend, also, the operation of section 10 of Law 3/77; that it cannot be said that it was ever intended to stretch to such an extent the meaning of the term "adjudication" in the said section 3 so that the net result would be the substitution in the place of the more severe punishments provided by means of the aforesaid section 10 the less severe punishments provided by means of section 69 of Law 10/69 in relation to educationalists found guilty of disciplinary offences; that the above conclusion is strengthened if one bears in mind the sweeping powers with which the Council of Ministers has been vested by means of section 4 of Law 57/78; and that if the notion of adjudication in section 3 of Law 57/78 is to be understood in its strict sense, so as not to include, also, the disciplinary punishments provided for by means of section 10 of Law 3/77, then the notion of "the conduct of investigation" in the said section 3 cannot be given such a wide meaning as to include the power to interdict which was vested in the Council of Ministers by means of subsection

(3) of section 3 of Law 3/77, merely because such subsection was introduced into the Second Part of Law 3/77 by means of Law 38/77.

(2) That it was not the intention of the Legislature to deprive, by virtue of section 3 of Law 57/78, the Council of Ministers of its powers of interdiction, under the said subsection (3) and to, thus, leave questions of interdiction to be decided by various appropriate authorities under the relevant Laws, to which the Council of Ministers may remit cases under section 4 of the same Law, especially, as it is expressly stated in the said section 4 that cases are to be remitted to the said appropriate authorities "for further investigation or adjudication" and interdiction does not form part of the process either of investigation or of adjudication, but it is a measure resorted to as a result, and not as a part, of such a process.

(3) (*After examining the exact nature of interdiction, as a measure resorted to as a result of disciplinary proceedings, and holding that it is not a measure of a disciplinary character, but a measure of an administrative nature*—vide pp. 412–3 *post*). That interdiction is distinct from disciplinary proceedings and, therefore, it is not proper to regard the expression "the procedure for the conduct of investigation" in section 3 of Law 57/78 as including, also, the provisions of the said subsection (3) of section 3 of Law 3/77, which, consequently, has remained unaffected by the enactment of the aforesaid section 3 of Law 57/78, and, so, it is still operative and has not been suspended since July 15, 1978.

(4) That since subsection (3) of section 3 of Law 3/77 is still in force any officer involved in disciplinary proceedings, under Law 3/77, can only be interdicted by the Council of Ministers under the provisions of the said subsection (3), because Law 3/77 is a specific Law creating a new and specialized category of disciplinary offences and the special provision made by it, through subsection (3), in connection with the aspect of interdiction, has to be applied in all cases coming within the ambit of Law 3/77, without it being possible to resort to provisions concerning interdiction in other enactments, such as section 74 of Law 10/69 or section 84 of Law 33/67; that, therefore, the respondent Committee had no competence to interdict the applicants; and

that, accordingly, the *sub judice* decision of the respondent regarding the interdiction must be annulled.

(5) That, in any event, it cannot be held that in the present instance the respondent Educational Service Committee was in any way empowered to resort to the measure of interdiction, under section 74 of Law 10/69, because the cases of the applicants in these proceedings were remitted to—and could only have been remitted to it—through the Ministry of Education, under section 4 of Law 57/78, solely for further investigation and adjudication, and not for any other action, such as interdiction.

(6) That, moreover, in the cases of all the present applicants the investigations as regards the complaints against them had commenced—and in relation to eight of them had already been completed—prior to the remitting of their cases, under section 4 of Law 57/78 to the Ministry of Education, and through it to the respondent Committee; and that, consequently, it cannot be said that there had been ordered an investigation in relation to their cases under section 70(b) of Law 10/69, so as to find as existing an essential prerequisite for the exercise of the discretionary powers vested in the respondent Committee under section 74 of Law 10/69, even assuming, which is not so in the opinion of this Court, that the said Committee had competence to decide to interdict the applicants.

(7) That, normally, this judgment, by virtue of which the interdictions of the applicants have been annulled, would take effect immediately as from today; that, in view of the nature and importance, from the point of view of public interest, of the grounds on which the interdictions of the applicants have been annulled, which entail the interpretation and application of basic provisions of Law 3/77 and Law 57/78, which have been specially enacted in order to ensure the purge from the public services of persons found guilty of disciplinary offences under Law 3/77, this Court has decided to take the exceptional course of staying, in the exercise of its powers under rule 19 of the Supreme Constitutional Court Rules, as well as under section 47 of the Courts of Justice Law, 1960 (Law 14/60), the execution of this judgment for the period of six weeks during which an appeal may be made against it, so as to preserve the existing position while both sides will be considering such an eventuality.

Sub judice interdictions annulled. Stay of execution of this judgment for six weeks ordered.

Per curiam:

(1) The continuance in force of subsection (3) of section 3 of Law 3/77 enables the Council of Ministers, in deciding whether to interdict any officer coming within the ambit of the application of Law 3/77, to adopt a uniform policy in the public interest, ensuring, thus, equality of treatment of all those affected. 5

(2) That even if this Court had not annulled the interdictions of the applicants for the aforementioned reasons, and even assuming that their recourses could not have succeeded on any of the other grounds relied on by their counsel for the annulment of their interdictions, it would, none the less, not have been prepared, in determining these recourses, to declare that the decision to interdict them was confirmed by this Court under Article 146.4(a) of the Constitution, but it would have adopted the special course (see *Saruhan* v. *The Republic*, 2 R.S.C.C. 133, 138) of not confirming the said *sub judice* decision, on the ground that such decision has to be reconsidered by the respondent Committee within a reasonable time because though the applicants were interdicted forthwith, other officers whose cases were likewise remitted were either not interdicted until, after the completion of the necessary investigations, disciplinary charges were preferred against them, or were not interdicted at all even after the preferment against them of such charges, with the result that the present applicants were, thus, rendered, eventually, the victims of unequal treatment contrary to Article 28 of the Constitution. 10 15 20 25

Cases referred to: 30

Decisions of the Greek Council of State in Case Nos. 293/1966, 1300/1967, 804/1970, 676/1975;

Dalitis v. *Republic* (1970) 3 C.L.R. 205;

R. v. *Wilcock*, 115 E.R. 509 at p. 518;

Union Bank of London v. *Ingram* [1881-1882] 20 Ch. D. 463 at p. 465; 35

Attorney-General v *Sillem and Others*, 159 E.R. 178 at p. 217;

The Commissioners for Special Purposes of the Income Tax v. *Pemsel* [1891] A.C. 531 at p. 542;

Attorney-General v. *Prince Ernest Augustus of Hanover* [1957] A.C. 436;

The Norwhale. Owners of the Vessel Norwhale v. *Ministry of Defence* [1975] 2 All E.R. 501 at p. 506;

5 *Saruhan* v. *The Republic*, 2 R.S.C.C. 133 at p. 138.

Recourses.

Recourses against the decision of the respondent Educational Service Committee to interdict applicants as a result of disciplinary proceedings which were set in motion against them
10 under the provisions of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws, 1977 to 1978.

E. Markidou (Mrs.), for the Applicants in Cases 34/79, 35/79, 36/79, 37/79 and 43/79.

A. Markides, for the applicants in Cases 40/79 and 41/79.

15 *E. Markidou (Mrs.)* with *P. Angelides*, for the Applicant in Case 42/79.

G. Georghiou, for the applicant in Case 44/79.

L. Papaphilippou with *Ph. Valiandis*, for the applicant in Case 45/79.

20 *A. S. Angelides*, for the respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. The ten applicants in these cases, namely M. Veis in 34/79, C. Kampis in 35/79, Arg. Anayiotos in 36/79, K. Kontovourkis in 37/79,
25 P. Christodoulides in 40/79, A. Kayias in 41/79, A. Antoniades in 42/79, Arist. Anayiotos in 43/79, A. Papaefthymiou in 44/79 and A. Mavrommatis in 45/79, have challenged the decision of the respondent Educational Service Committee, taken on November 9, 1978, to interdict them as from November 11, 1978.

30 In some of them (34/79, 35/79, 36/79, 37/79, 43/79 and 45/79) the Ministry of Education was originally named, also, as a respondent, but, in the course of the hearing, counsel appearing for the applicants concerned informed the Court that they did not intend to pursue their recourses as against the Ministry.
35 Also, counsel for the applicant in 45/79 agreed that it should be heard, for the time being, only regarding claim B in the motion for relief.

It is common ground that the *sub judice* decision of the respon-

dent Committee was taken under section 74(1) of the Public Educational Service Law, 1969 (Law 10/69), and it reads (see *exhibit* F) as follows:-

" Β' ΠΕΙΘΑΡΧΙΚΑ

Ἐν ὄψει τοῦ γεγονότος ὅτι ὑπὸ τῆς ἐνδιαφερομένης 'Αρμοδίας 'Αρχῆς ἔχει διαταχθῆ ἡ διεξαγωγὴ ἐρεύνης δι' ἐνδεχομένην διάπραξιν ὑπὸ τῶν ἀκολούθων ἐκπαιδευτικῶν λειτουργῶν πειθαρχικῶν ἀδικημάτων ἐμπιπτόντων εἰς τοὺς περὶ 'Ωρισμένων Πειθαρχικῶν Παραπτωμάτων (Διεξαγωγὴ 'Ερεύνης καὶ 'Εκδίκασις) Νόμους τοῦ 1977 ἕως 1978 ὡς καὶ εἰς τὸν Νόμον 57 τοῦ 1978 περὶ 'Αναστολῆς τῆς Διαδικασίας τῆς προνοουμένης ὑπὸ τῶν ὡς ἄνω νόμων καὶ τοῦ Νόμου 10 τοῦ 1969 περὶ Δημοσίας 'Εκπαιδευτικῆς 'Υπηρεσίας, ἡ 'Επιτροπὴ ἀπεφάσισεν ὅτι λόγῳ τῆς σοβαρότητος τῶν κατ' ἰσχυρισμὸν ἀδικημάτων εἶναι πρὸς τὸ δημόσιον συμφέρον ὅπως οὗτοι τεθῶσιν εἰς διαθεσιμότητα ἀπὸ τῆς 11.11.78 καὶ μέχρι τῆς τελικῆς ἐκδικάσεως τῆς ὑποθέσεως.

Κατὰ τὴν διάρκειαν τῆς διαθεσιμότητος αἱ ἐξουσίαι, τὰ προνόμοια καὶ τὰ ὠφελήματα αὐτῶν ὡς ἐκπαιδευτικῶν λειτουργῶν ἀναστέλλονται αἱ δὲ ἀπολαβαὶ των περιορίζονται εἰς τὸ ἥμισυ αὐτῶν."

("B' *DISCIPLINARY*

In view of the fact that there has been ordered by the Appropriate Authority concerned the conduct of investigations for the possible commission by the following educational officers of disciplinary offences coming within the ambit of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978, as well as of Law 58 of 1978 for the Suspension of Proceedings provided by the aforesaid Laws, and of the Public Educational Service Law, 10 of 1969, the Committee decided that because of the seriousness of the alleged offences it is in the public interest that they should be interdicted as from 11.11.78 and until the final adjudication of the case.

During the interdiction the powers, privileges and benefits vested in them as educational officers shall remain in abeyance and their emoluments shall be reduced by half.").

By the above decision there were interdicted, in all, thirty-five

educationalists, including the ten present applicants, two of whom are serving in the secondary education and the remaining eight are serving in the elementary education.

Prior to the above decision of the respondent Committee, the 5 Council of Ministers decided, on November 2, 1978 (see *exhibit* D), to remit to the appropriate authority, under the relevant Law, for further investigation or adjudication, as the case might be, a number of cases of public officers, including educationalists among whom were the present applicants.

10 The Council acted, in this connection, under section 4 of the *Certain Disciplinary Offences (Conduct of Investigation and* Adjudication) Laws 1977 to 1978, Suspension of Proceedings Law, 1978 (Law 57/78).

The "Laws 1977 to 1978", referred to in the title of Law 15 57/78, *supra*, are the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977 (Law 3/77), the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) (Amendment) Law, 1977 (Law 38/77), and the Certain Disciplinary Offences (Conduct of Investigation and 20 Adjudication) (Amendment) Law, 1978 (Law 12/78).

It is useful to quote as a whole the text of Law 57/78, which was promulgated by publication in the Official Gazette on October 27, 1978; it reads as follows:–

" 'Αριθμὸς 57 τοῦ 1978

25 ΝΟΜΟΣ ΠΡΟΒΛΕΠΩΝ ΠΕΡΙ ΑΝΑΣΤΟΛΗΣ ΤΗΣ ΔΙΑΔΙΚΑΣΙΑΣ ΤΗΣ ΠΡΟΝΟΟΥΜΕΝΗΣ ΥΠΟ ΤΩΝ ΠΕΡΙ ΩΡΙΣΜΕΝΩΝ ΠΕΙΘΑΡΧΙΚΩΝ ΠΑΡΑΠΤΩΜΑΤΩΝ (ΔΙΕΞΑΓΩΓΗ ΕΡΕΥΝΗΣ ΚΑΙ ΕΚΔΙΚΑΣΙΣ) ΝΟΜΩΝ ΤΟΥ 1977 ΕΩΣ 1978

'Επειδὴ ἡ λόγῳ τοῦ πραξικοπήματος δημιουργηθεῖσα 30 ἔκρυθμος κατάστασις ἐπέβαλλε τὴν ταχεῖαν καὶ ἀποτελεσματικὴν ἐκκαθάρισιν τῶν διαφόρων ὑπηρεσιῶν τῆς Δημοκρατίας καὶ τῶν ἡμικρατικῶν ὀργανισμῶν ἀπὸ τὰ ἀμετανόητα ἐπιβλαβῆ στοιχεῖα.

Καὶ ἐπειδὴ πρὸς τὸν σκοπὸν τοῦτον, ἐψηφίσθησαν οἱ περὶ 35 'Ωρισμένων Πειθαρχικῶν Παραπτωμάτων (Διεξαγωγὴ 'Ερεύνης καὶ 'Εκδίκασις) Νόμοι τοῦ 1977 ἕως 1978.

Καὶ ἐπειδὴ ἐκ τῶν πραγμάτων ἀπεδείχθη ὅτι ἐσημειώθη σημαντικὴ καθυστέρησις εἰς ὅ,τι ἀφορᾶ τὴν ταχεῖαν ἔρευναν καὶ ἐκδίκασιν τῶν ὑπ' αὐτῶν προνοουμένων πειθαρχικῶν παραπτωμάτων.

Καὶ ἐπειδὴ θεωρεῖται ἀναγκαία καὶ ἀπαραίτητος ἡ μὲ ταχὺν ρυθμὸν διερεύνησις καὶ ἐκδίκασις τῶν παραπτωμάτων τούτων. 5

Διὰ ταῦτα ἡ Βουλὴ τῶν 'Αντιπροσώπων ψηφίζει ὡς ἀκολούθως:

1. 'Ο παρὼν Νόμος θὰ ἀναφέρηται ὡς ὁ περὶ 'Αναστολῆς τῆς Διαδικασίας τῆς Προνοουμένης ὑπὸ τῶν περὶ 'Ωρισμένων Πειθαρχικῶν Παραπτωμάτων (Διεξαγωγὴ 'Ερεύνης καὶ 'Εκδίκασις) Νόμων τοῦ 1977 ἕως 1978, Νόμος τοῦ 1978. 10

2.-(1) 'Εν τῷ παρόντι Νόμῳ, ἐκτὸς ἐὰν ἐκ τοῦ κειμένου προκύπτῃ διάφορος ἔννοια— 15

'Νόμοι' σημαίνουν τοὺς περὶ 'Ωρισμένων Πειθαρχικῶν Παραπτωμάτων (Διεξαγωγὴ 'Ερεύνης καὶ 'Εκδίκασις) Νόμους τοῦ 1977 ἕως 1978.

'ὁρισθεῖσα ἡμέρα' σημαίνει τὴν 15ην 'Ιουλίου, 1978.

(2) Ὅροι μὴ εἰδικῶς ὁριζόμενοι ἐν τῷ παρόντι Νόμῳ ἔχουν τὴν εἰς τοὺς ὅρους τούτους ἀποδιδομένην ἔννοιαν ὑπὸ τῶν Νόμων. 20

3. 'Η ὑπὸ τῶν Νόμων προβλεπομένη διαδικασία διεξαγωγῆς ἐρεύνης καὶ ἐκδικάσεως παραπτωμάτων ἀναστέλλεται ἀπὸ τῆς ὁρισθείσης ἡμέρας. 25

4. Πᾶσα καταγγελία ὑποβληθεῖσα συμφώνως πρὸς τὰς διατάξεις τῶν Νόμων καὶ πᾶσα ἔρευνα διεξαχθεῖσα βάσει τούτων διαβιβάζεται ὑπὸ τῆς ἀρχῆς ἐνώπιον τῆς ὁποίας αὕτη εὑρίσκεται συμφώνως πρὸς τὰς διατάξεις τῶν Νόμων καὶ εἰς ὃ στάδιον αὕτη ἔχει φθάσει κατὰ τὴν ὁρισθεῖσαν ἡμέραν πρὸς τὸν 'Υπουργὸν Δικαιοσύνης ὅπως ὑποβάλῃ ταύτην πρὸς τὸ 'Υπουργικὸν Συμβούλιον. Τὸ 'Υπουργικὸν Συμβούλιον δύναται, ἐκτὸς ἐὰν κατὰ τὴν γνώμην του ὑφίστανται ἰσχυροὶ λόγοι δημοσίου συμφέροντος ὅπως μὴ χωρήσῃ περαιτέρω διαδικασία, ἐν τῇ ἐνασκήσει τῶν ἐξουσιῶν αὐτοῦ νὰ προβῇ εἰς τερματισμὸν τῆς ὑπηρεσίας τοῦ ὑπαλλήλου διὰ λόγους δημοσίου συμφέροντος ἢ τὴν 30 35

ἀναγκαστικὴν ἀφυπηρέτησιν τοῦ ὑπαλλήλου βάσει τῆς κειμένης νομοθεσίας, ἢ νὰ παραπέμψῃ τὴν ὅλην ὑπόθεσιν πρὸς τὴν ἁρμοδίαν ἀρχὴν βάσει τοῦ οἰκείου νόμου πρὸς περαιτέρω ἔρευναν ἢ ἐκδίκασιν καὶ ἐν τοιαύτῃ περιπτώσει διαβιβάζει ἅπαντα τὰ εἰς αὐτὸ διαβιβασθέντα ἔγγραφα πρὸς τὴν ἀρχὴν ταύτην. Τὰ ἔγγραφα ταῦτα θεωροῦνται ὡς ἀναφερόμενα εἰς ἔρευναν δυνάμει τοῦ οἰκείου νόμου. Ἡ ἁρμοδία ἀρχὴ προβαίνει τὸ ταχύτερον εἰς τὴν ἀναγκαίαν πρὸς τοῦτο ἐνέργειαν.

5. Οὐδὲν τῶν ἐν τῷ παρόντι Νόμῳ κωλύει τὸ Ὑπουργικὸν Συμβούλιον ὅπως λάβῃ τοιαῦτα μέτρα (συμπεριλαμβανομένου καὶ τοῦ διοικητικοῦ μέτρου τοῦ τερματισμοῦ τῶν ὑπηρεσιῶν τοῦ ὑπαλλήλου διὰ λόγους δημοσίου συμφέροντος) τὰ ὁποῖα ἠδύνατο νὰ λάβῃ ἢ προβῇ εἰς τοιαύτην ἐνέργειαν εἰς τὴν ὁποίαν θὰ ἠδύνατο νὰ προβῇ βάσει τῶν διατάξεων οἱουδήποτε ἐν ἰσχύϊ Νόμου.

6. Ἡ ἰσχὺς τοῦ παρόντος Νόμου ἄρχεται ἀπὸ τῆς 15ης Ἰουλίου, 1978."

("No. 57 of 1978..

A LAW TO MAKE PROVISION FOR THE SUSPENSION OF PROCEEDINGS UNDER THE CERTAIN DISCIPLINARY OFFENCES (CONDUCT OF INVESTIGATION AND ADJUDICATION) LAWS 1977 TO 1978

Whereas the abnormal situation created by the coup d'etat rendered imperative the expeditious and effective purge of the various public services of the Republic and of the public corporations from unrepentant harmful elements.

And whereas for this purpose there were enacted the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978,

And whereas in the course of events there has occurred considerable delay regarding the expeditious investigation and adjudication of the disciplinary offences provided thereunder,

And whereas the expeditious investigation and adjudication of these offences is considered necessary and indispensable,

Now, therefore, the House of Representatives enacts as follows:

1. This Law may be cited as the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978, Suspension of Proceedings Law, 1978. 5

2.-(1) In this Law, unless the context otherwise requires—
'Laws' means the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978. 10

'appointed date' means the 15th July, 1978.

(2) Expressions which are not specially defined in this Law shall have the meaning assigned to such expressions by the Laws.

3. The procedure for the conduct of investigation and adjudication of offences provided by the Laws is suspended as from the appointed date. 15

4. Every complaint submitted in accordance with the provisions of the Laws and every investigation carried out under them is forwarded, by the authority before which 20 it is pending in accordance with the provisions of the Laws and at the stage which it has reached on the appointed date, to the Minister of Justice in order to be submitted by him to the Council of Ministers. The Council of Ministers, unless it is of the opinion that there exist 25 strong reasons of public interest for not proceeding any further, may proceed, in the exercise of its powers, to terminate the services of an officer for reasons of public interest or to retire an officer compulsorily under the legislation in force, or to remit the whole case to the 30 appropriate authority under the relevant Law for further investigation or adjudication and in such case it shall transmit all the documents forwarded to it to such authority. These documents shall be deemed to relate to an investigation under the relevant Law. The appro- 35 priate authority shall proceed as expeditiously as possible to take necessary action in this respect.

5. Nothing in this Law contained shall prevent the Council

of Ministers from taking such measures (including the administrative measure of the termination of the services of an officer for reasons of public interest) which it can take or from adopting such a course of action which it
5 can adopt under the provisions of any Law in force.

6. This Law shall come into force as from the 15th July 1978.").

The aforementioned decision of the Council of Ministers, which was taken on November 2, 1978, under section 4 of Law
10 57/78, above, was communicated on November 8, 1978, to the Director-General of the Ministry of Education. On November 9, 1978, the Minister of Education addressed a letter to the respondent Committee, regarding the educationalists mentioned in the said decision of the Council of Ministers, by means of
15 which he informed the Committee that there were being examined in relation to the said educationalists disciplinary offences coming within the ambit of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws, 1977 to 1978 (see *exhibit* E).

20 As has been stated during the hearing of these cases by counsel for the respondent Committee, when this letter of the Minister of Education was received by the Committee the position was that as regards the applicants in 34/79, 35/79, 36/79, 37/79, 40/79, 41/79, 43/79 and 44/79 investigations had already com-
25 menced and had been completed under Law 3/77, on divers dates during the period from January to May 1978; as regards the applicants in 42/79 and 45/79 investigations had commenced under Law 3/77 but had not yet been completed, and, therefore, investigating officers were appointed on December 11, 1978,
30 under the relevant provisions of Law 10/69, in order to continue such investigations.

It is convenient to deal, now, with an objection raised by counsel for the respondent Committee to the effect that an interdiction is not an executory act, but that it is only a prelimi-
35 nary or ancillary internal administrative measure, which, though it has legal consequences, can be made the subject matter of a recourse under Article 146 of the Constitution only when the eventual outcome of the disciplinary process to which it is related is challenged by a recourse.

As was already stated earlier on in this judgment, the applicants were interdicted under section 74 of Law 10/69, which corresponds to section 84 of the Public Service Law, 1967 (Law 33/67), and reads as follows:

74.-(1) 'Εάν ἔρευνα πειθαρχικοῦ ἀδικήματος διαταχθῇ δυνάμει τῶν διατάξεων τῆς παραγράφου (β) τοῦ ἄρθρου 70, κατά τινος ἐκπαιδευτικοῦ λειτουργοῦ ἢ ἐπὶ τῇ ἐνάρξει ἀστυνομικῆς ἐρεύνης ἐπὶ σκοπῷ ποινικῆς διώξεως κατ' αὐτοῦ ἡ 'Επιτροπὴ δύναται, ἐὰν τὸ δημόσιον συμφέρον ἀπαιτῇ τοῦτο, νὰ θέσῃ εἰς διαθεσιμότητα τὸν ἐκπαιδευτικὸν λειτουργὸν διαρκούσης τῆς ἐρεύνης καὶ μέχρι τῆς τελικῆς συμπληρώσεως τῆς ὑποθέσεως.

(2) Εἰδοποίησις ὅτι ἐτέθη οὕτω εἰς διαθεσιμότησα δίδεται ἐγγράφως εἰς τὸν ἐκπαιδευτικὸν λειτουργὸν τὸ ταχύτερον, ἐπὶ τούτῳ δὲ αἱ ἐξουσίαι, τὰ προνόμια καὶ τὰ ὠφελήματα τοῦ ἐκπαιδευτικοῦ λειτουργοῦ ἀναστέλλονται διαρκούσης τῆς περιόδου τῆς διαθεσιμότητος:

Νοεῖται ὅτι ἡ 'Επιτροπὴ ἐπιτρέπει εἰς τὸν ἐκπαιδευτικὸν λειτουργὸν νὰ λαμβάνῃ μέρος τῶν ἀπολαβῶν τῆς θέσεως αὐτοῦ, οὐχὶ ὀλιγώτερον τοῦ ἡμίσεος, ὡς ἡ 'Επιτροπὴ ἤθελε κρίνει.

(3) 'Εὰν ὁ ἐκπαιδευτικὸς λειτουργὸς ἀπαλλαγῇ ἢ ἐὰν ἐκ τῆς ἐρεύνης δὲν ἀποδειχθῇ ὑπόθεσις κατ' αὐτοῦ, ἡ διαθεσιμότης τερματίζεται καὶ ὁ ἐκπαιδευτικὸς λειτουργὸς δικαιοῦται εἰς τὸ πλῆρες ποσὸν τῶν ἀπολαβῶν τὰς ὁποίας θὰ ἐλάμβανεν ἐὰν δὲν ἐτίθετο εἰς διαθεσιμότητα. 'Εὰν εὑρεθῇ ἔνοχος καὶ ἡ ποινὴ εἶναι ἄλλη ἢ ἡ τῆς ἀπολύσεως, ἐπιστρέφεται εἰς τὸν ἐκπαιδευτικὸν λειτουργὸν τοσοῦτον μέρος τῶν ἀπολαβῶν αὐτοῦ ὅσον ἡ 'Επιτροπὴ ἤθελε κρίνει. 'Εὰν ἡ ἐπιβληθεῖσα ποινὴ εἶναι ἀπόλυσις, ὁ ἐκπαιδευτικὸς λειτουργὸς δὲν λαμβάνει ἀπολαβὰς διὰ τὴν περίοδον ἀπὸ τῆς ἡμερομηνίας τῆς καταδίκης μέχρι τῆς ἡμερομηνίας τῆς ἀπολύσεως αὐτοῦ."

("74.-(1) When an investigation of a disciplinary offence is directed under the provisions of paragraph (b) of section 70, against an educational officer or on the commencement of a police investigation with the object of criminal proceedings against him, the Committee may, if public interest so requires, interdict the educational officer from

duty pending the investigation and until the final disposal of the case.

(2) Notice of such investigation shall be given in writing to the educational officer as soon as possible and thereupon the powers, privileges and benefits vested in the educational officer shall remain in abeyance during the period the interdiction continues:

Provided that the Committee shall allow the educational officer to receive such portion of the emoluments of his office, not being less than one half, as the Committee may think fit.

(3) If the educational officer is acquitted or if as a result of the investigation there is no case against him, the interdiction shall come to an end and the educational officer shall be entitled to the full amount of the emoluments which he would have received if he had not been interdicted. If he is found guilty and the punishment is other than dismissal, the educational officer may be refunded such portion of his emoluments as the Committee may think fit. If the punishment imposed on the educational officer is dismissal, the educational officer shall receive no emoluments in respect of the period from the date of his conviction to the date of his dismissal.").

Counsel for the respondent Committee has not disputed that the measure of interdiction, provided for under section 74, above, corresponds to interdiction in an analogous situation in Greece. So, in this respect, it is useful to refer to Discourses on Administrative Law ("Μαθήματα Διοικητικοῦ Δικαίου") 1957, by Stasinopoulos, where, at pp. 344, 350–353, the matter of interdiction is dealt with fully. As it is to be derived from what is stated there, interdiction, under section 74 of Law 10/69, corresponds, primarily, to what is described by Stasinopoulos as "δυνητική άργία" ("discretionary interdiction"), which has to be distinguished from compulsory interdiction and interdiction due to circumstances for which the public officer concerned cannot be held to be responsible, such as abolition of his post or illness (and see, also, in this respect, *inter alia*, the decisions of the Council of State in Greece in cases 293/1966, 1300/1967 and 804/1970).

In my opinion, there can be no doubt that the interdiction of the applicants in the present cases amounts to administrative action which has all the essential attributes of an executory decision which can be challenged by recourse under Article 146 of the Constitution—(see, too, in this connection, the decision of 5 the Council of State in Greece in case 676/1975, reported in the Review of Public Law and Administrative Law—" 'Επιθεώρησις Δημοσίου Δικαίου καὶ Διοικητικοῦ Δικαίου"—1975, vol. 19, p. 167)—and which, while it lasts, affects adversely and directly existing legitimate interests of the applicants, in the sense of 10 paragraph 2 of the said Article 146.

That interdiction is a decision of an executory nature can be derived, also, from *Dalitis* v. *The Republic*, (1970) 3 C.L.R. 205, where there was challenged by a recourse, under Article 146, and was annulled the omission to treat the interdiction of the 15 applicant in that case as having come to an end.

Furthermore, the already referred to, above, cases of the Council of State in Greece (293/1966, 1300/1967, 804/1970 and 676/1975), where decisions to interdict were challenged by a recourse under the provision in Greece corresponding to Article 20 146 of our Constitution, amply show that the measure of interdiction has been treated there as being of an executory nature.

I cannot, therefore, sustain the objection of counsel for the respondent Committee that the applicants in the present cases cannot challenge directly, by a recourse under Article 146, the 25 *sub judice* decision to interdict them; and I might add that I find no merit in the argument that subsection (3) of section 74 of Law 10/69, which makes provision regarding what is going to happen in relation to the interdiction and its consequences at the conclusion of the relevant disciplinary process, must be construed 30 as rendering a decision to interdict, such as the one which is the subject matter of the proceedings, immune from being challenged by a recourse prior to the conclusion of such process.

Another objection which was raised by counsel for the respondent Committee, namely that recourses 44/79 and 45/79 were 35 filed out of time, in that they were filed on January 24, 1979, that is after there had elapsed, since the *sub judice* decision of November 9, 1978, more than the seventy-five days which are prescribed by Article 146.3 of the Constitution, has not been,

eventually, pressed by him and, thus, was abandoned, because it was ascertained that the said decision had only come to the knowledge of the applicants concerned on November 11, 1979, when it, also, actually took effect.

5 One of the main arguments which has been advanced by counsel for the applicants against the validity of the decision to interdict them has been that the respondent Committee did not possess, in the circumstances, the competence to do so.

It is correct that when Law 3/77 was enacted no provision was 10 made about the interdiction of officers to whom its provisions would be applied; but, such a provision was, later, added as subsection (3) of section 3 of Law 3/77, by means of section 2(b) of Law 38/77; the said subsection (3) reads as follows:-

"'(3) 'Ο 'Υπουργὸς ἐπὶ τῇ διαβιβάσει καταγγελίας πρὸς 15 τὴν 'Επιτροπὴν πρὸς ἔρευναν δυνάμει τοῦ ἐδαφίου (2) κέκτηται ἐξουσίαν ὅπως ζητήσῃ παρὰ τοῦ 'Υπουργικοῦ Συμβουλίου, ἐὰν τὸ δημόσιον συμφέρον ἀπαιτῇ τοῦτο, νὰ θέσῃ εἰς διαθεσιμότητα τὸν ὑπάλληλον διαρκούσης τῆς ἐρεύνης καὶ μέχρι τῆς τελικῆς συμπληρώσεως τῆς ὑποθέσεως καὶ τὸ 20 'Υπουργικὸν Συμβούλιον κέκτηται ἐξουσίαν ὅπως θέσῃ τὸν ὑπάλληλον εἰς διαθεσιμότητα ὁπότε ἐφαρμόζονται αἱ διατάξεις τοῦ ἄρθρου 89 τοῦ περὶ Δημοσίας 'Υπηρεσίας Νόμου 1967, τηρουμένων τῶν ἀναλογιῶν.'"

("On referring a complaint to the Committee for investiga-25 tion under subsection (2) the Minister is empowered to ask the Council of Ministers, if the public interest so requires, to interdict the officer during the investigation and until the final disposal of the case and the Council of Ministers is empowered to interdict the officer, in which case the provi-30 sions of section 89 of the Public Service Law, 1967, shall be applicable *mutatis mutandis*").

I think that it is obvious that "section 89" in the text of subsection (3), above, is a misprint and it should be read "as section 84", which is the relevant section of Law 33/67; in any event, the 35 last section in such Law is section 88 and, so, there does not exist "section 89".

It is well established that obvious misprints in a statute may be corrected by the Courts (see Craies on Statute Law, 7th ed.,

p. 521). In this respect, Lord Denman C. J. said the following in *R.* v. *Wilcock*, 115 E.R. 509 (at p. 518):-

> " Secondly, whether the penalty is properly distributed by the adjudication, is assumed to depend on the question whether the Act just alluded to was in these particulars repealed by stat. 58 G. 3, c. 51, which repeals 'an Act passed in the thirteenth year' of G. 3, entitled 'An Act for,' *&* c.; and here is set out the title of stat. 17 G. 3, c. 56, not that of any Act passed in the 13 G. 3, nor, we presume, of any other Act whatever. A mistake has been committed by the Legislature; but, having regard to the subject matter, and looking to the mere contents of the Act itself, we cannot doubt that the intention was to repeal the 17 G. 3, and that the incorrect year must be rejected."

It is to be noted that section 11 of Law 3/77 provides that nothing contained in the said Law precludes any other process or the taking of any other measure under the provisions of any other Law in force from time to time, but, in my opinion, it is clear that, once the conduct of investigation has been set in motion under section 3 of Law 3/77, as it has happened in all the cases at present before me, then, in accordance with subsection (3) of section 3, above, the officer concerned—(and see, in this respect, the definition of "officer" in section 2 of Law 3/77)—can only be interdicted by the Council of Ministers under the said subsection (3).

It has been submitted by counsel for the respondent that the operation of subsection (3), above, has been suspended as from July 15, 1978, because of the fact that section 3 of Law 57/78 ordains, in effect, that the operation of the provisions of Laws 3/77 to 12/78, as regards the procedure for the conduct of investigation and adjudication in relation to the disciplinary offences concerned is suspended as from the said date.

It is correct that the Second Part (containing sections 3 to 7) of Law 3/77 is headed "Conduct of investigation" and that the Third Part of the same Law (containing sections 8 to 11) is headed "Adjudication of disciplinary offences". But it should be observed that if it was the intention of the Legislature to suspend, in toto, by section 3 of Law 57/78, the operation of the Second and Third Parts of Law 3/77, as amended by Laws 38/77

and 12/78, then normally the said section 3 should have been worded so as to state expressly that the operation of sections 3 to 11, or, alternatively, the operation of the Second and Third Parts of Law 3/77, is suspended as from the appointed date,
5 namely July 15, 1978; but, this was not done. Using the words of Brett L.J. in *Union Bank of London* v. *Ingram*, [1881-1882] 20 Ch. D. 463, 465, I say that an express reference to the aforementioned sections or Parts of Law 3/77 seems to have been "designedly omitted" from section 3 of Law 57/78 (and see,
10 also, in this connection, Craies, *supra*, at p. 107).

In *The Attorney General* v. *Sillem and others*, 159 E.R. 178, Pollock C.B. observed (at p. 217):-

> "In order to know what a statute does mean, it is one important step to know what it does not mean; and if it
> 15 be quite clear that there is something which it does not mean, then that which is suggested or supposed to be what it does mean, must be consistent and in harmony with what it is clear that it does not mean."

In my opinion it was never intended by the Legislature to
20 suspend, in toto, the operation of the Second and Third Parts of Law 3/77, in view of the fact that, obviously, it could not have been ever intended to suspend, as from the aforesaid appointed date, the operation of either section 11 of Law 3/77—to which reference has already been made earlier in this judgment—or, a
25 fortiori, of section 10 of Law 3/77 which provides for the punishments to be imposed on those found guilty of offences under Law 3/77. That is why subsection (3) of Law 57/78 must be taken to have suspended the operation only of those provisions of Laws 3/77 to 12/78 which expressly provide about the conduct
30 of the investigation and the adjudication in respect of the said disciplinary offences.

As it is clearly stated in the preamble to Law 57/78, the purpose for which it was enacted was to expedite the investigation and adjudication in relation to the aforementioned disci-
35 plinary offences as there had occurred considerable delay in this connection.

The use of a preamble, in construing the provisions of a particular statute, has been explained by Lord Halsbury L.C. in *The*

Commissioners for Special Purposes of the Income Tax v. *Pemsel*, [1891] A.C. 531 (at p. 542) as follows:-

"My Lords, to quote from the language of Tindal C.J. when delivering the opinion of the Judges in the *Sussex Peerage Case*[1]: 'The only rule for the construction of Acts of Parliament is, that they should be construed according to the intent of the Parliament which passed the Act. If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound those words in their natural and ordinary sense. The words themselves alone do in such case best declare the intention of the lawgiver. But if any doubt arises from the terms employed by the Legislature, it has always been held a safe means of collecting the intention, to call in aid the ground and cause of making the statute, and to have recourse to the preamble, which, according to Dyer C.J. (*Stowel* v. *Lord Zouch*[2]), is a key to open the minds of the makers of the Act, and the mischiefs which they are intended to redress.' ".

Also, in *Attorney-General* v. *Prince Ernest Augustus of Hanover*, [1957] A.C. 436, Viscount Simonds stressed the importance of construing a statute as a whole, by stating (at p. 460):-

"My Lords, the contention of the Attorney-General was, in the first place, met by the bald general proposition that where the enacting part of a statute is clear and unambiguous, it cannot be cut down by the preamble, and a large part of the time which the hearing of this case occupied was spent in discussing authorities which were said to support that proposition. I wish at the outset to express my dissent from it, if it means that I cannot obtain assistance from the preamble in ascertaining the meaning of the relevant enacting part. For words, and particularly general words, cannot be read in isolation: their colour and content are derived from their context. So it is that I conceive it to be my right and duty to examine every word of a statute in its context, and I use 'context' in its widest sense, which I have already indicated as including not only other enacting

1. 11 Cl. & F. at p. 143.
2. Plow. at p. 369.

provisions of the same statute, but its preamble, the existing state of the law, other statutes in pari materia, and the mischief which I can, by those and other legitimate means, discern the statute was intended to remedy."

5 The above dictum of Viscount Simonds was referred to with approval by Brandon J. in *The Norwhale. Owners of the vessel Norwhale* v. *Ministry of Defence*, [1975] 2 All E.R. 501, 506.

In the light of the preamble to Law 57/78, it cannot be held that it was the intention of the Legislature, when enacting section 10 3 of Law 57/78, to suspend, also, the operation of section 10 of Law 3/77; it cannot be said that it was ever intended to stretch to such an extent the meaning of the term "adjudication" in the said section 3 so that the net result would be the substitution in the place of the more severe punishments provided by means of 15 the aforesaid section 10 the less severe punishments provided by means of section 69 of Law 10/69 in relation to educationalists found guilty of disciplinary offences; and the above conclusion is strengthened if one bears in mind the sweeping powers with which the Council of Ministers has been vested by means of 20 section 4 of Law 57/78.

If the notion of adjudication in section 3 of Law 57/78 is to be understood in its strict sense, so as not to include, also, the disciplinary punishments provided for by means of section 10 of Law 3/77, then, in my view, the notion of "the conduct of 25 investigation" in the said section 3 cannot be given such a wide meaning as to include the power to interdict which was vested in the Council of Ministers by means of subsection (3) of section 3 of Law 3/77, merely because such subsection was introduced into the Second Part of Law 3/77 by means of Law 38/77.

30 In my opinion, it was not the intention of the Legislature to deprive, by virtue of section 3 of Law 57/78, the Council of Ministers of its powers of interdiction, under the said subsection (3) and to, thus, leave questions of interdiction to be decided by various appropriate authorities under the relevant Laws, to 35 which the Council of Ministers may remit cases under section 4 of the same Law; especially, as it is expressly stated in the said section 4 that cases are to be remitted to the said appropriate authorities "for further investigation or adjudication" and interdiction does not form part of the process either of investigation

or of adjudication, but it is a measure resorted to as a result, and not as a part, of such a process.

That interdiction is a measure which does not form part of, but it is distinct from, the process of investigation or adjudication in relation to a disciplinary offence emerges from an examination of the relevant provisions of Law 33/67 (see, respectively, sections 80 to 83, as well as the Second Schedule, and section 84) and, also, of the corresponding provisions of Law 10/69 (see sections 70 to 73, as well as the Second Schedule, and section 74).

As has already been stated in this judgment, counsel for the respondent has not disputed that the measure of interdiction, under section 74 of Law 10/69, corresponds to the measure of interdiction in a similar situation in Greece; therefore, it is useful to examine what exactly is the nature of such measure in Greece, even though the corresponding legislative provisions in Cyprus and Greece, respectively, are not similar in all respects.

Interdiction is one mode of altering, albeit temporarily, the status of a public officer (see Discourses on Administrative Law, *supra*, by Stasinopoulos, p. 344, Kyriakopoulos on Greek Administrative Law—"Ἑλληνικὸν Διοικητικὸν Δίκαιον"—4th ed., vol. C, p. 311, and Fthenakis on the Law of Public Officers—"Σύστημα Ὑπαλληλικοῦ Δικαίου"—1st ed., vol. C, p. 114). It is a measure which is resorted to in relation, *inter alia*, to the deprivation of the personal liberty of a public officer by means of a warrant of arrest or a judicial decision, or in case of dismissal of a public officer by virtue of a disciplinary decision, or when there is pending against such an officer either a criminal prosecution or a disciplinary process; and in all such cases it is usually described as "ἀργία", being contradistinguished from "διαθεσιμότης" which is used, mainly, to denote interdiction which is applicable in cases of illness or abolition of post (see, *inter alia*, Stasinopoulos, *supra*, pp. 350–353, Kyriakopoulos *supra*, pp. 323–327, Fthenakis, *supra*, pp. 100–120, and the decision of the Council of State in Greece in case 1300/1967).

In Cyprus, for the purposes of section 84 of Law 33/67 and of section 74 of Law 10/69, respectively, interdiction, which corresponds to "ἀργία" in Greece, is described generally as "διαθεσιμότης".

Interdiction, when resorted to in relation to a pending disci-

plinary process, is not a measure of a disciplinary character, but a measure of an administrative nature (see Stasinopoulos, *supra*, at p. 396, and Conclusions from the Case-Law of the Council of State in Greece—"Πορίσματα Νομολογίας τοῦ Συμβουλίου τῆς 5 'Επικρατείας"—1929-1959, p. 368, as well as the decisions of the Council of State in Greece in cases 293/1966 and 804/1970); consequently, the principle of non bis in idem is not applicable when, in relation to the same disciplinary offence, there is resorted to the measure of interdiction and there is imposed, 10 also, disciplinary punishment (see Conclusions, *supra*, at p. 368); and interdiction is not the only measure of administrative nature which may be resorted in connection with a pending disciplinary process, since another such measure may be a transfer, or, in Greece, "διαθεσιμότης", as distinguished from "ἀργία" (see, 15 again, Stasinopoulos, *supra*, at p. 396, and Conclusions, *supra*, at p. 368).

As it appears from the already referred to, earlier, in this judgment, decision of the Council of State in Greece in case 676/1975, it is quite possible for interdiction in relation to disci- 20 plinary proceedings to be ordered by means of a decision of a Minister, while the disciplinary proceedings in question take place before a Disciplinary Board; and it is interesting to note that the legislation in Greece (the Ordinance of September 3, 1974), to which the said case 676/1975 relates, is an enactment 25 which is of the same nature a, our own Law 3/77, but under the said Greek Ordinance the interdiction pending the disposal of the relevant disciplinary process is compulsory, whereas under subsection (3) of section 3 of Law 3/77 it is only discretionary.

The above examination of the exact nature of interdiction, as 30 a measure resorted to as a result of disciplinary proceedings, strengthens, in my opinion, the view that it is distinct from such proceedings and that, therefore, it is not proper to regard the expression "the procedure for the conduct of investigation" in section 3 of Law 57/78 as including, also, the provisions of the 35 said subsection (3) of section 3 of Law 3/77, which, consequently, has remained unaffected by the enactment of the aforesaid section 3 of Law 57/78, and, so, it is still operative and has not been suspended since July 15, 1978.

Since subsection (3), above, is still in force any officer involved 40 in disciplinary proceedings, under Law 3/77, can only be inter-

dicted under the provisions of the said subsection (3), because Law 3/77 is a specific Law creating a new and specialized category of disciplinary offences and the special provision made by it, through subsection (3), in connection with the aspect of interdiction, has to be applied in all cases coming within the ambit of Law 3/77, without it being possible to resort to provisions concerning interdiction in other enactments, such as section 74 of Law 10/69 or section 84 of Law 33/67.

As it is stated by Craies, *supra*, at p. 369, "in the case of an Act which creates a new Jurisdiction, a new procedure, new forms, or new remedies, the procedure, forms, or remedies there prescribed, and no others, must be followed until altered by subsequent legislation".

That it was the intention of the Legislature to preserve, within the exclusive competence of the Council of Ministers, the right to interdict officers coming within the ambit of the application of the provisions of Law 3/77, may be inferred, also, from the provisions of section 4 of Law 57/78, because it appears therefrom that one of the main purposes of Law 57/78 was to vest the Council of Ministers with the powers, *inter alia*, of deciding whether or not it is in the public interest that certain cases are to be proceeded with further, and, also, to terminate the services of, or retire, an officer concerned for reasons of public interest; therefore, interdiction, which is an administrative measure which can be resorted to in the public interest as a result of a pending disciplinary process, should be treated, in the absence of any express provision to the contrary in Law 57/78, as having remained within the exclusive competence of the Council of Ministers, which is empowered to consider, from a universal and general point of view, questions of public interest related to the application of Law 3/77, especially as it is expressly stipulated in the relevant to interdiction provision of Law 3/77, namely subsection (3) of its section 3, that the measure of interdiction is to be resorted to in the public interest.

The continuance in force of subsection (3), above, enables the Council of Ministers, in deciding whether to interdict any officer coming within the ambit of the application of Law 3/77, to adopt a uniform policy in the public interest, ensuring, thus, equality of treatment of all those affected.

In any event, it cannot be held that in the present instance the

respondent Educational Service Committee was in any way empowered to resort to the measure of interdiction, under section 74 of Law 10/69, because the cases of the applicants in these proceedings were remitted to it—and could only have been remitted to it—through the Ministry of Education, under section 4 of Law 57/78, solely for further investigation and adjudication, and not for any other action, such as interdiction.

Moreover, as has already been stated in this judgment, in the cases of all the present applicants the investigations as regards the complaints against them had commenced—and in relation to eight of them had already been completed—prior to the remitting of their cases, under section 4 of Law 57/78 to the Ministry of Education, and through it to the respondent Committee; consequently, it cannot be said that there had been ordered an investigation in relation to their cases under section 70(b) of Law 10/69, so as to find as existing an essential prerequisite for the exercise of the discretionary powers vested in the respondent Committee under section 74 of Law 10/69, even assuming, which is not so in my opinion, that the said Committee had competence to decide to interdict the applicants.

I have, therefore, for all the reasons set out in this judgment, to annul the *sub judice* decision of the respondent Committee regarding the interdiction of the applicants as from November 11, 1978.

Having annulled the complained of by the applicants decision of the respondent Committee, for the aforesaid reasons, it is not either necessary or proper for me to deal with any other contention which has been put forward, in the present proceedings, in relation to the validity of such decision.

Before concluding this judgment I would like to state that even if I had not annulled the interdictions of the applicants for the aforementioned reasons, and even assuming that their recourses could not have succeeded on any of the other grounds relied on by their counsel for the annulment of their interdictions, I would, none the less, not have been prepared, in determining these recourses, to declare that the decision to interdict them was confirmed by me under Article 146.4(a) of the Constitution, but I would have adopted the special course (see *Saruhan* v. *The Republic*, 2 R.S.C.C. 133, 138) of not confirming

the said *sub judice* decision, on the ground that such decision has to be reconsidered by the respondent Committee within a reasonable time.

My reason for doing so is that from the material which has been placed before me after the hearing of these cases was reopened on May 18, 1979, as well as from the material which was made available in the course of the proceedings in cases 33/79, 452/78 and 466/78—which are similar to the present cases, and which have, also, been heard by me—it appears that whereas, initially, public officers, as well as educationalists, such as the applicants, and members of the Police Force, whose cases were remitted by the Council of Ministers, on November 2, 1978, to the appropriate authorities, under section 4 of Law 57/78, were interdicted forthwith, other officers whose cases were likewise remitted, on February 15, 1979, by the Council of Ministers, were either not interdicted until, after the completion of the necessary investigations, disciplinary charges were preferred against them, or were not interdicted at all even after the preferment against them of such charges, with the result that the present applicants were, thus, rendered, eventually, the victims of unequal treatment contrary to Article 28 of the Constitution.

It is now up to the Council of Ministers to decide whether or not the said applicants should be interdicted in relation to any pending against them disciplinary processes, under subsection (3) of section 3 of Law 3/77. It is correct that they have not yet been interdicted though investigations in connection with disciplinary offences coming within the ambit of Law 3/77, and allegedly committed by them have already been set in motion, and in respect of eight out of them they have, also, been completed. But, in my view, the said subsection (3) is so worded that interdiction may be resorted to under it, in the public interest, at any time till the final disposal of the disciplinary process against a particular officer.

Normally, this judgment, by virtue of which the interdictions of the applicants have been annulled, would take effect immediately as from today; but, in view of the nature and importance, from the point of view of public interest, of the grounds of which the interdictions of the applicants have been annulled, which entail the interpretation and application of basic provisions of

Law 3/77 and Law 57/78, which have been specially enacted in order to ensure the purge from the public services of persons found guilty of disciplinary offences under Law 3/77, I have decided to take the exceptional course of staying, in the exercise of my powers under rule 19 of the Supreme Constitutional Court Rules, as well as under section 47 of the Courts of Justice Law, 1960 (Law 14/60), the execution of this judgment for the period of six weeks during which an appeal may be made against it, so as to preserve the existing position while both sides will be considering such an eventuality.

Furthermore, in the light of all pertinent considerations, I have decided to make no order as to the costs of the present proceedings.

Sub judice decision annulled. Stay of execution for six weeks ordered. No order as to costs.