9η 'Ιουνίου, 1979

(ΧΑΤΖΗΑΝΑΣΤΑΣΣΙΟΥ, Δ.)

ΕΠΙ ΤΟΙΣ ΑΦΟΡΩΣΙ ΤΟ ΑΡΘΡΟΝ 146 ΤΟΥ ΣΥΝΤΑΓΜΑΤΟΣ

ΘΕΟΧΑΡΗΣ (ΧΑΡΗΣ) ΙΩΑΝΝΟΥ ΚΑΙ ΑΛΛΟΣ,

Αἰτηταὶ,

κατὰ

ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ
ΜΕΣΩ ΤΟΥ ΥΠΟΥΡΓΕΙΟΥ ΕΣΩΤΕΡΙΚΩΝ,

Καθ' οὗ ἡ αἴτησις.

(*Ὑποθέσεις ὑπ' ἀρ.* 111/77 *καὶ* 123/77).

Προσφυγὴ δυνάμει τοῦ "Αρθρου 146 *τοῦ Συντάγματος–'Απόφασις ἢ πρᾶξις ἐν τῇ ἐννοίᾳ τοῦ ἄρθρου* 146.1–*'Αναστολὴ προαγωγῆς ἀξιωματικῶν τῆς 'Αστυνομίας–'Ανάγεται εἰς τὴν σφαῖραν τοῦ δημοσίου δικαίου καὶ δύναται νὰ ὑποβληθῇ προσφυγὴ κατ' αὐτῆς.*

Διοικητικὸν δίκαιον–Διοικητικαὶ πράξεις–Νόμιμοι Διοικητικαὶ πράξεις–'Ανάκλησις–Γενικαὶ 'Αρχαὶ–Προαγωγαὶ εἰς τὴν 'Αστυνομικὴν δύναμιν–'Αναστολὴ μέχρι τῆς διερευνήσεως πληροφοριακῶν στοιχείων κατὰ τῶν προαχθέντων–Προαγωγαὶ ἐδημιούργησαν δικαιώματα–Ἦσαν δεσμευτικαὶ καὶ δὲν ἠδύναντο νὰ ἀκυρωθῶσι οὔτε νὰ ἀνακληθῶσι ἐπ' ἀόριστον–Διότι ἡ ἐπ' ἀόριστον ἀνάκλησις ἰσοδυναμεῖ μὲ τὴν ἀκύρωσιν τῆς πράξεως–'Εὰν ἡ διοίκησις ἀπεδέχετο ὅτι οἱ αἰτηταὶ διέπραξαν πειθαρχικῆς φύσεως παραπτώματα, τότε ὤφειλε νὰ τεθῇ εἰς ἐφαρμογὴν ἡ διαδικασία ἡ ὁποία προνοεῖται διὰ πειθαρχικὰ ἀδικήματα, διὰ νὰ δύνανται οἱ αἰτηταὶ νὰ ὑπερασπίσουν ἑαυτοὺς συμφώνως καὶ τῶν ἀρχῶν τῆς φυσικῆς δικαιοσύνης.

'Αστυνομικὴ Δύναμις–Προαγωγαὶ–'Ανάκλησις–Γενικαὶ ἀρχαί.

Δι' ἐπιστολῆς ἡμερομ. 4ης 'Ιανουαρίου, 1977, ὁ Γενικὸς Διευθυντὴς τοῦ Ὑπουργείου 'Εσωτερικῶν ἐπληροφόρησε τὸν

Editor's note: An English translation of this judgment appears at pp. 442–459 *post.*

πρῶτον αἰτητὴν ὅτι ὁ 'Υπουργὸς 'Εσωτερικῶν ἀπεφάσισε νὰ τοῦ προσφέρῃ προαγωγὴν εἰς τὴν θέσιν τοῦ 'Ανωτέρου 'Αστυνόμου ἀπὸ τῆς 1ης 'Ιανουαρίου, 1977· καὶ δι' ἐπιστολῆς τῆς αὐτῆς ἡμερομηνίας ἐπληροφόρησε τὸν δεύτερον αἰτητὴν ὅτι ὁ 'Υπουργὸς 'Εσωτερικῶν ἀπεφάσισε νὰ τοῦ προσφέρῃ προαγωγὴν εἰς τὴν θέσιν 'Αστυνόμου Β'. 'Αμφότεροι οἱ αἰτηταὶ ἀπεδέχθησαν τὴν προσφερθεῖσαν προαγωγὴν δι' ἐπιστολῶν των πρὸς τὸν Γενικὸν Διευθυντὴν τοῦ 'Υπουργείου 'Εσωτερικῶν. Δι' ἐπιστολῆς ἡμερ. 8.2.1977 ὁ Γενικὸς Διευθυντὴς τοῦ 'Υπουργείου 'Εσωτερικῶν ἐπληροφόρησε τοὺς αἰτητὰς ὅτι ὁ 'Υπουργὸς 'Εσωτερικῶν ἀνέστειλε τὴν προαγωγὴν των "μέχρι τῆς διερευνήσεως πληροφοριακῶν καθ' ὑμῶν στοιχείων ἅτινα ἐλήφθησαν εἰς τὸ 'Υπουργεῖον τοῦτο."

"Οθεν αἱ παροῦσαι προσφυγαὶ διὰ τῶν ὁποίων οἱ δύο αἰτηταὶ αἰτοῦνται, μεταξὺ ἄλλων, δήλωσιν τοῦ δικαστηρίου ὅτι ἡ ἀναστολὴ τῆς προαγωγῆς των εἰς τὸν βαθμὸν τοῦ 'Ανωτέρου 'Αστυνόμου καὶ 'Αστυνόμου Β', ἀντιστοίχως, εἶναι ἄκυρος καὶ ἐστερημένη οἱουδήποτε ἀποτελέσματος καὶ ἐγένετο καθ' ὑπέρβασιν ἢ κατάχρησιν τῆς ἐξουσίας τῆς ἐμπεπιστευμένης εἰς τὸ ὄργανον ἢ τὴν ἀρχήν.

Οἱ νομικοὶ λόγοι οἱ ὁποῖοι ἠγέρθησαν εἰς ἀμφοτέρας τὰς προσφυγὰς ἦσαν:

(1) 'Εφ' ὅσον ἐγένετο ἐκ μέρους τοῦ 'Υπουργοῦ 'Εσωτερικῶν προσφορὰ προαγωγῆς εἰς τοὺς δύο αἰτητὰς εἰς τὴν θέσιν 'Ανωτέρου 'Αστυνόμου καὶ 'Αστυνόμου Β' καὶ τὴν ὁποίαν οἱ αἰτηταὶ ἀπεδέχθησαν ἐγγράφως, ἡ προαγωγὴ ἐγένετο ἀποτελεσματικὴ καὶ δεσμευτικὴ καὶ δὲν ἦτο δυνατὸν νὰ ἀκυρωθῇ ἢ νὰ ἀνακληθῇ ὑπὸ τοῦ 'Υπουργοῦ 'Εσωτερικῶν ἐκτὸς διὰ πειθαρχικὸν παράπτωμα διὰ τὸ ὁποῖον οἱ αἰτηταὶ ἔπρεπε νὰ κατηγορηθοῦν, νὰ δικασθοῦν καὶ νὰ καταδικασθοῦν συμφώνως τῶν προνοιῶν τοῦ νόμου. "Ενεκα τούτου ὁ 'Υπουργὸς 'Εσωτερικῶν δὲν ἠδύνατο νομικῶς νὰ ἀνακαλέσῃ τὴν λειτουργίαν τῆς προαγωγῆς.

(2) 'Η διοικητικὴ πρᾶξις τῆς προαγωγῆς εἶναι σύμβασις ἢ καὶ μονομερὴς σύμβασις τὴν ὁποίαν ὁ 'Υπουργὸς 'Εσωτερικῶν δὲν ἔχει δικαίωμα νὰ ἀκυρώσῃ ἢ νὰ ἀνακαλέσῃ διὰ μονομεροῦς πράξεως.

Τὸ Δικαστήριον ἔκρινεν ὅτι:

(1) 'Η ἀνάκλησις ἡ ὁποία ἔγινεν ὑπὸ τοῦ 'Υπουργοῦ 'Εσωτερικῶν

εἶναι ζήτημα τὸ ὁποῖον ἀνάγεται εἰς τὴν σφαῖραν τοῦ δημοσίου δικαίου καὶ ὡς ἐκ τούτου ἠδύνατο νὰ ὑποβληθῇ προσφυγὴ κατὰ τῆς ἀνακλήσεως.

(2) Ὅταν ὁ Ὑπουργὸς Ἐσωτερικῶν ἀπεφάσισε νὰ προσφέρῃ προαγωγὴν εἰς τοὺς δύο αἰτητάς, καὶ προτοῦ οἱ δύο αἰτηταὶ ἀποδεχθοῦν τὴν προσφορὰν διὰ νὰ συμπληρωθῇ ἡ διοικητικὴ πρᾶξις, τότε μόνον ἡ συμφωνία μεταξὺ τῆς διοικήσεως καὶ τῶν αἰτητῶν ἠδύνατο νὰ ἀνακληθῇ (ἴδε ἀρ. 44(6) τοῦ περὶ Δημοσίας Ὑπηρεσίας Νόμου, 1967, ἄρθρ. 13(1) τοῦ Περὶ Ἀστυνομίας Νόμου, *Παναγίδης ἐναντίον τῆς Δημοκρατίας* (1972) 3 C.L.R. 467 καὶ *Τζαβέλλας καὶ ἄλλοι ἐναντίον τῆς Δημοκρατίας* (1975) 3 C L.R. 490).

(3) Ἡ διοίκησις ὀφείλει κατ' ἀρχὴν νὰ ἔχῃ εἰς χεῖρας της ἀρκετὰ στοιχεῖα ἐναντίον τῶν αἰτητῶν διὰ τὴν ἀνάκλησιν τῆς διοικητικῆς πράξεως· καὶ διὰ νὰ δύναται ἡ διοίκησις νὰ ἐπικαλεσθῇ τὸ δημόσιον συμφέρον. Δὲν ὑπάρχει ἀμφιβολία ὅτι ἡ διοίκησις ὤφειλε νὰ εἶχε τοιαύτας πληροφορίας αἱ ὁποῖαι νὰ ἐδικαιολόγουν ἀπόφασιν, καὶ ὄχι νὰ ἀνακαλέσῃ τὴν ἀπόφασιν τὴν ὁποίαν ἐπῆρε διὰ τοὺς σκοποὺς ὅπως αὕτη ἐρευνήσῃ διὰ νὰ ἴδῃ κατὰ πόσον ὑπάρχουν ἀρκεταὶ πληροφορίαι διὰ νὰ τὴν ἀνακαλέσῃ κατόπιν. Αὐτὴ ἡ θέσις συνάδει μὲ τὰς ἀγγλικὰς αὐθεντίας. Ἐὰν ἡ διοίκησις ἀπεδέχετο ὅτι οἱ αἰτηταὶ διέπραξαν πειθαρχικῆς φύσεως παραπτώματα, τότε ὤφειλε νὰ τεθῇ εἰς ἐφαρμογὴν ἡ διαδικασία ἡ ὁποία προνοεῖται διὰ πειθαρχικὰ ἀδικήματα, διὰ νὰ δύνανται οἱ αἰτηταὶ νὰ ὑπερασπίσουν ἑαυτοὺς συμφώνως καὶ τῶν ἀρχῶν τῆς φυσικῆς δικαιοσύνης.

(4) Ὁσάκις ἡ ἐκδοθεῖσα πρᾶξις ἐγένετο νομίμως, ὅπως εἰς τὰς παρούσας αἰτήσεις, εἶναι ὑποχρεωτικὴ διὰ τὴν δημοσίαν ἀρχήν, ἀφοῦ δεσμεύεται ἐκ τοῦ νόμου νὰ τὴν ἐκδώσῃ· καὶ ἀφοῦ αἱ προαγωγαὶ τῶν αἰτητῶν ἔγιναν κατόπιν οὐσιαστικῆς κρίσεως τοῦ Ὑπουργοῦ Ἐσωτερικῶν.

(5) Αἱ διοικητικαὶ ἀρχαὶ ὀφείλουν νὰ μὴν ἀνακαλῶσι τὰς νομίμους αὐτῶν πράξεις, ἐκ τῶν ὁποίων ἐδημιουργήθησαν δικαιώματα εἰς τοὺς ὑπηρετοῦντας εἰς τὴν Κυπριακὴν Δημοκρατίαν. Ἐφ' ὅσον αἱ διοικητικαὶ πράξεις τῶν προαγωγῶν ἔχουν δημιουργήσει δικαιώματα εἰς τὴν ἱεραρχίαν τῆς Ἀστυνομικῆς δυνάμεως, καὶ ἐφ' ὅσον αἱ προαγωγαὶ ἀνήκουν εἰς τὴν σφαῖραν τοῦ δημοσίου δικαίου, δὲν δύνανται νὰ ἀκυρωθῶσι οὔτε νὰ ἀνακληθῶσι ἐπ' ἀόριστον ὅπως συμβαίνει εἰς τὰς παρούσας

αἰτήσεις, διότι ἡ ἐπ' ἀόριστον ἀνάκλησις ἰσοδυναμεῖ μὲ τὴν ἀκύρωσιν τῆς πράξεως ἢ καὶ ἀνάκλησιν αὐτῆς.

(6) Διὰ ὅλους τοὺς ὡς ἄνω λόγους τὸ Δικαστήριον κατέληξεν εἰς τὸ συμπέρασμα ὅτι ἡ ἀκύρωσις ἢ καὶ ἀνάκλησις τῶν προαγωγῶν εἰς τὸν βαθμὸν τοῦ 'Ανωτέρου 'Αστυνόμου καὶ 'Αστυνόμου Β' εἶναι ἀντίθετος πρὸς τὰς διατάξεις τοῦ Συντάγματος, τοῦ νόμου, καὶ ἐγένετο καθ' ὑπέρβασιν ἢ κατάχρησιν τῆς ἐξουσίας τῆς ἐμπεπιστευμένης εἰς τὸ διοικητικὸν ὄργανον. Κατὰ συνέπειαν αἱ δύο προσφυγαὶ ἐπιτυγχάνουν καὶ ἡ ἀπόφασις ἢ ἡ πρᾶξις κηρύσσεται ἐν ὅλῳ ἄκυρος καὶ ἐστερημένη οἱουδήποτε ἀποτελέσματος καὶ ὅτι πᾶν τὸ παραλειφθὲν ἔδει νὰ εἶχεν ἐκτελεσθεῖ.

'Ακύρωσις ἐπιδίκων πράξεων.

'Υποθέσεις παρατεθεῖσαι:

Παντελίδου ἐναντίον τῆς Δημοκρατίας, 4 R.S.C.C. 100.

Σταματίου ἐναντίον τῆς 'Αρχῆς 'Ηλεκτρισμοῦ Κύπρου, 3 R.S.C.C. 445.

Πασχαλίδη ἐναντίον τῆς Δημοκρατίας (1969) 3 C.L.R. 297.

Παναγίδης ἐναντίον τῆς Δημοκρατίας (1972) 3 C.L.R. 467.

Τζαβέλλας καὶ ἄλλος ἐναντίον τῆς Δημοκρατίας (1975) 3 C.L.R. 490.

Γεωργιάδης ἐναντίον τῆς Δημοκρατίας (1967) 3 C.L.R. 653.

'Ιωαννίδης ἐναντίον τῆς Δημοκρατίας (1972) 3 C.L.R. 318.

Ζινιέρης ἐναντίον τῆς Δημοκρατίας (1975) 3 C.L.R. 224.

Μεταφορικὴ 'Εταιρεία Περιστερωνοπηγῆς ἐναντίον τῆς Δημοκρατίας (1967) 3 C.L.R. 451.

Χατζηπετρῆ ἐναντίον τῆς Δημοκρατίας (1968) 3 C.L.R. 702.

Ψάλτης ἐναντίον τῆς Δημοκρατίας (1971) 3 C.L.R. 372.

'Αποφάσεις τοῦ Συμβουλίου τῆς 'Επικρατείας τῆς 'Ελλάδος ὑπ' ἀρ. 3030/66, 801/69, 2879/69 *καὶ* 1716/70.

Ridge v. Baldwin and Others [1963] 2 W.L.R. 935.

Προσφυγαί.

Προσφυγαὶ κατὰ τῆς ἀναστολῆς τῶν προαγωγῶν τῶν αἰτητῶν εἰς τὸν βαθμὸν 'Ανωτέρου 'Αστυνόμου καὶ 'Αστυνόμου Β' ἀντιστοίχως.

Γ. Κακογιάννης, δι' ἃ τοὺς αἰτητάς.

Β. 'Αριστοδήμου, Δικηγόρος τῆς Δημοκρατίας, διὰ τοὺς καθ' ὧν ἡ αἴτησις.

Cur. adv. vult.

ΧΑΤΖΗΑΝΑΣΤΑΣΣΙΟΥ, Δ. Τὸ 'Ανώτατον Δικαστήριον κέκτηται ἀποκλειστικὴν δικαιοδοσίαν νὰ ἀποφασίζῃ ὁριστικῶς καὶ ἀμετακλήτως ἐπὶ πάσης προσφυγῆς ὑποβαλλομένης κατ' ἀποφάσεως, πράξεως ἢ παραλείψεως οἱουδήποτε ὀργάνου, ἀρχῆς ἢ προσώπου ἀσκούντων ἐκτελεστικὴν ἢ διοικητικὴν λειτουργίαν ἐπὶ τῷ λόγῳ ὅτι αὕτη εἶναι ἀντίθετος πρὸς τὰς διατάξεις τοῦ Συντάγματος ἢ τὸν νόμον ἢ ἐγένετο καθ' ὑπέρβασιν ἢ κατάχρησιν τῆς ἐξουσίας τῆς ἐμπεπιστευμένης εἰς τὸ ὄργανον ἢ τὴν ἀρχὴν ἢ τὸ πρόσωπον τοῦτο.

Εἰς τὰς δύο ὑποθέσεις αἱ ὁποῖαι ἠκούσθησαν μαζί, οἱ δύο αἰτηταὶ Θεοχάρης 'Ιωάννου καὶ Δῆμος 'Ιωάννου Ζένιος εἰς τὰς αἰτήσεις των ζητοῦν δήλωσιν τοῦ Δικαστηρίου ὅτι: (α) ἡ ἀναστολὴ τῆς προαγωγῆς των εἰς τὸν βαθμὸν τοῦ 'Ανωτέρου 'Αστυνόμου καὶ 'Αστυνόμου Β' ἀντιστοίχως, εἶναι ἄκυρος καὶ ἐστερημένη οἱουδήποτε ἀποτελέσματος καὶ ἐγένετο καθ' ὑπέρβασιν ἢ κατάχρησιν τῆς ἐξουσίας τῆς ἐμπεπιστευμένης εἰς τὸ ὄργανον ἢ τὴν ἀρχήν· καὶ (β) δήλωσιν ὅτι ἡ παράλειψις τῶν καθ' ὧν ἡ αἴτησις νὰ δημοσιεύσουν εἰς τὴν 'Επίσημον 'Εφημερίδα τῆς Δημοκρατίας τὴν προαγωγὴν τῶν αἰτητῶν καὶ νὰ λάβουν ὅλα τὰ ἀναγκαῖα διαβήματα διὰ νὰ δώσουν συμπληρωμένον ἀποτέλεσμα εἰς τὴν προαγωγὴν δὲν ἔπρεπε νὰ γίνῃ καὶ ὁ,τιδήποτε ἔχει παραλειφθῆ ἔπρεπε νὰ εἶχεν ἐκτελεσθῆ.

Τὰ γεγονότα τῆς ὑποθέσεως ἔχουν ὡς ἑξῆς: Τὴν 4ην 'Ιανουαρίου, 1977, ὁ Γενικὸς Διευθυντὴς τοῦ 'Υπουργείου 'Εσωτερικῶν ἀπέστειλεν ἐπιστολὴν πρὸς τὸν πρῶτον αἰτητὴν καὶ ἡ ὁποία ἔχει ὡς ἀκολούθως:

> " 'Ενετάλην νὰ πληροφορήσω ὑμᾶς ὅτι ὁ 'Υπουργὸς 'Εσωτερικῶν *ἀπεφάσισεν νὰ σᾶς προσφέρῃ προαγωγὴν εἰς τὴν* θέσιν τοῦ 'Ανωτέρου 'Αστυνόμου εἰς τὴν 'Αστυνομίαν ἀπὸ τῆς 1ης *'Ιανουαρίου* 1977. *'Ο μισθὸς σας θὰ εἶναι £2,674 ἐτησίως* ἐπὶ τῆς μισθολογικῆς κλίμακος £2,518×98–£2,812 καὶ £2,714.– *ἀπὸ τῆς 1ης 'Ιουνίου* 1977. *'Επὶ πλέον καταβάλλεται τιμα*ριθμικὸν ἐπίδομα συμφώνως πρὸς τὸ ποσοστὸν τὸ ἐγκρινόμενον *ὑπὸ τῆς Κυβερνήσεως ἀπὸ καιροῦ εἰς καιρόν.*
>
> 2. 'Η νέα ἡμερομηνία προσαυξήσεώς σας θὰ εἶναι ἡ 1η 'Ιουνίου.
>
> 3. Παρακαλῶ ὅπως μὲ πληροφορήσετε τὸ ταχύτερον δυνατὸν ἐὰν ἀποδέχεσθε τὴν προσφορὰν ταύτην."

Τὴν 4ην 'Ιανουαρίου, 1977, ὁ πρῶτος αἰτητὴς ἀπέστειλεν ἐπι-

στολὴν πρὸς τὸν Γενικὸν Διευθυντὴν τοῦ Ὑπουργείου Ἐσωτερικῶν μέσῳ τοῦ Ἀρχηγοῦ τῆς Ἀστυνομίας ἡ ὁποία κατὰ λέξιν λέγει:

" Ἀναφέρομαι εἰς ὑμετέραν ἐπιστολὴν Ἀρ. Φακ. Ρ(Ρ) 30 τῆς 4.1.77 ἐν σχέσει πρὸς προσφορὰν ὑπὸ τοῦ ἐντίμου Ὑπουργοῦ Ἐσωτερικῶν προαγωγῆς μου εἰς τὴν θέσιν τοῦ Ἀνωτέρου Ἀστυνόμου ἀπὸ τῆς 1.1.1977 καὶ ἔχω τὴν τιμὴν νὰ σᾶς πληροφορήσω ὅτι ἀποδέχομαι ταύτην. Παραλλήλως ἐκφράζω τὰς θερμὰς μου εὐχαριστίας διὰ τὴν τιμὴν ἥτις μοῦ ἐγένετο."

Τὴν 8ην Φεβρουαρίου, 1977, ὁ Γενικὸς Διευθυντὴς τοῦ ἰδίου ὑπουργείου ἀπέστειλεν ἐπιστολὴν εἰς τὴν ὁποίαν ἐκφράζει τὰς νέας ἀπόψεις τοῦ Ὑπουργοῦ Ἐσωτερικῶν καὶ λέγει:

" Ἐνετάλην παρὰ τοῦ Ὑπουργοῦ Ἐσωτερικῶν νὰ ἀναφερθῶ εἰς τὴν γενομένην πρὸς ὑμᾶς προσφορὰν ὑπ' ἀρ. Φακ. Ρ(Ρ) 30 τῆς 4ης Ἰανουαρίου, 1977 διὰ προαγωγὴν εἰς τὴν θέσιν τοῦ Ἀνωτέρου Ἀστυνόμου καὶ νὰ σᾶς πληροφορήσω ὅτι ὁ Ὑπουργὸς Ἐσωτερικῶν ἀνέστειλε τὴν προαγωγὴν σας μέχρι τῆς διερευνήσεως πληροφοριακῶν καθ' ὑμῶν στοιχείων ἅτινα ἐλήφθησαν εἰς τὸ Ὑπουργεῖον τοῦτο."

Εὐθὺς ὡς ἐλήφθη ἡ ἐπιστολὴ αὕτη ὁ πρῶτος αἰτητὴς δικαιολογημένως κατὰ τὴν γνώμην μου, ἀπέστειλεν ἐπιστολὴν πρὸς τὸν Ὑπουργὸν Ἐσωτερικῶν ἐκφράζων τὴν ἀνησυχίαν του καὶ λέγει:

" Ἐπιτρέψατε μου νὰ ἀποταθῶ πρὸς ὑμᾶς καὶ νὰ ἐπιζητήσω συνάντησιν μετὰ τῆς Αὐτοῦ Μακαριότητος τοῦ προέδρου τῆς Δημοκρατίας Ἀρχιεπισκόπου Μακαρίου, ἵνα μοῦ δοθῇ ἡ εὐκαιρία νὰ ἀποδείξω τὸ ἀμόλυντον τοῦ ὀνόματος μου καὶ τῆς οἰκογενείας μου.

Ὅπως εἶχα ἐξηγήσει εἰς ὑμᾶς πλειστάκις εἰς τὸ πρόσφατον παρελθὸν ἀνέμενον ὅτι τυχὸν ψίθυροι καὶ διαδόσεις εἰς βάρος μου, θὰ ἐγίνοντο αἰτία κλήσεως μου ὑπὸ τοῦ Μακαριωτάτου μέσῳ ὑμῶν καὶ τοῦ Ἀρχηγοῦ τῆς Ἀστυνομίας διὰ τὴν ἰδικήν μου ἐξήγησιν. ἢ ἔστω ἀνάκρισιν, πρᾶγμα τὸ ὁποῖον δὲν ἐγένετο καὶ τοῦτο παρὰ τὴν ὑπ' ἐμοῦ ἐκφρασθεῖσαν ἐπιθυμίαν καὶ ἐπιδίωξιν μέσῳ ὑμῶν ὅτι ἐὰν ὑφίστατο τοιοῦτο θέμα θὰ ἠδύνασθο νὰ διευθετούσατε συνάντησιν μου μετὰ τοῦ Μακαριωτάτου.

Ἐφησύχαζα, ὡς ἐκ τούτου, ὅτι μέχρι τῆς γενομένης προσφορᾶς προαγωγῆς μου τὴν 4.1.77, δὲν προέκυψε λόγος διὰ τὴν αἰτουμένην συνάντησιν. Ἐν τούτοις ὅμως, ἔχων

ὑπ' ὄψιν τὴν ἀναστολὴν τῆς προαγωγῆς μου, καὶ τὰ διάφορα δημοσιεύματα ἅτινα προσβάλλουν ἄμεσα καὶ ἔμμεσα τὸ ἄτομον μου, διεμαρτυρήθην ἐπανειλημμένως, πρὸς ὑμᾶς, ὑποβάλας καὶ ἔγγραφον παράπονον τὴν 9.1.77 πέραν τοῦ τηλεγραφήματος μου πρὸς ὑμᾶς τὴν 12.1.77.

Ἀνέμενον ὅτι ἐν τῷ μεταξὺ θὰ συνεπληροῦτο ἡ ἐπισήμως ἀνακοινωθεῖσα διερεύνησις τῶν στοιχείων ἅτινα ἐδόθησαν ὑμῖν μέσῳ τοῦ Μακαριωτάτου, ὅτε καὶ θὰ ἐδίδετο καὶ εἰς ἐμὲ ἡ εὐκαιρία—(α) νὰ ἀντικρούσω τοὺς γενομένους ἐναντίον μου ἰσχυρισμούς, κακοήθεις καὶ συκοφαντικοὺς κατ' ἐμέ, καὶ (β) νὰ δυνηθῶ νὰ ἀσκήσω τὸ ἀναφαίρετον δικαίωμα μου πρὸς ἀποκατάστασιν τῆς τιμῆς καὶ ἀξιοπρεπείας μου δι' ὅλων τῶν εἰς τὴν διάθεσιν μου ἐνδίκων μέσων.

Μέχρι σήμερον ὅμως—παρῆλθον ἤδη πέραν τῶν 30 ἡμερῶν —οὐδεμιᾶς ἀνακριτικῆς διαδικασίας ἔλαβον γνῶσιν οὔτε ἐκλήθην νὰ ὑπερασπίσω ἑαυτὸν, πρᾶγμα κατ' ἐμὲ ἄδικον καὶ ἐναντίον πάσης ἠθικῆς τάξεως καὶ τῶν κανόνων τοῦ Διοικητικοῦ Δικαίου.

Ὡς ἐκ τῶν ἀνωτέρω, καὶ παρὰ τὴν ἐπιθυμίαν μου ὅπως μὴ ἀντιδικήσω μὲ τὴν σεβαστὴν Κυβέρνησιν, εἶμαι ἐκ τῶν πραγμάτων ὑποχρεωμένος νὰ αἰτήσω μέσῳ ὑμῶν τὰ κάτωθι, ὡς μία ὑστάτη ἔκκλησις:

(1) Διευθέτησιν ἀκροάσεως μου παρὰ τῷ Μακαριωτάτῳ ἵνα μοῦ δοθῇ ἡ εὐκαιρία νὰ ἐξηγήσω εἰς Αὐτὸν τυχὸν ἀμφιβολίας Του, ὡς πρὸς τὴν νομιμοφροσύνην μου καὶ θέσω ἐνώπιον Του στοιχεῖα ἅτινα, ταπεινῶς φρονῶ, δὲν ἔχει ὑπ' ὄψιν ἡ, καθ' ὅλας τὰς ἐνδείξεις, δὲν ἐτέθησαν ὑπ' ὄψιν Του εἰς ὅ,τι ἀφοροῦν εἰς τὸ πρόσωπον μου,

(2) Ταχεῖαν συμπλήρωσιν τῆς ἀνακριτικῆς διαδικασίας ἐν σχέσει πρὸς τὰ παρασχεθέντα ὑμῖν στοιχεῖα ἐναντίον μου, καὶ ἐν πάσῃ περιπτώσει πρὸ τοῦ τέλους τρέχοντος μηνός, ἵνα ἔχω τὴν εὐκαιρίαν νὰ προσβάλω διὰ προσφυγῆς τυχὸν ἄδικον μεταχείρισιν μου ἐντὸς τῆς ὑπὸ τοῦ Συντάγματος προβλεπομένης τακτῆς προθεσμίας. (Ὑπενθυμίζω πρὸς τούτοις καὶ τὸ δικαίωμα μου νὰ κληθῶ ἐνώπιον οἱασδήποτε ἀνακριτικῆς Ἐπιτροπῆς δυνάμει τοῦ Συντάγματος (Ἄρθρα 29 & 30) καὶ τῶν περὶ Ἀστυνομίας Πειθαρχικῶν Κανονισμῶν.)

Ἐπισυνάπτω ὡς Παράρτημα εἰς τὴν παροῦσαν μου ἀντίγραφον ἐπιστολῆς μου πρὸς τὴν ἐφημερίδα ΝΕΑ ἡμερομηνίας 27.1.77 τὸ ὁποῖον περιέχει καὶ δήλωσιν μου ὡς πρὸς τὰ φρονήματα καὶ τὴν ἰδεαλιστικὴν τοποθέτησιν μου, πρὸς ἐνημέρωσιν τοῦ Μακαριωτάτου.

Ἐν τέλει θὰ ἐπεθύμουν νὰ ἀναφέρω ὅτι διὰ λόγους ἀξιοπρεπείας καὶ ἐπαγγελματικοῦ γοήτρου—λόγοι ἱεροὶ δι' ἐμὲ—θὰ εὑρίσκωμαι ἐπ' ἀδείᾳ (ἐκ τῆς συσσωρευθείσης εἰς πίστην μου) μέχρις ὅτου ἀποκατασταθοῦν τόσον ἡ τιμὴ καὶ ἡ ἐπαγγελματικὴ 'μου ἀξιοπρέπεια ὅσον καὶ τὰ δικαιώματα μου."

Ὁ δεύτερος αἰτητὴς Δῆμος Ἰωάννου Ζένιος ὁ ὁποῖος ἐπίσης ὑπηρετεῖ εἰς τὰς τάξεις τῆς Ἀστυνομίας ἔλαβεν ἐπιστολὴν τοῦ Γενικοῦ Διευθυντοῦ τοῦ Ὑπουργείου Ἐσωτερικῶν τὴν 4ην Ἰανουαρίου, 1977, διὰ τῆς ὁποίας ἐπληροφορεῖτο ὅτι ὁ Ὑπουργὸς Ἐσωτερικῶν ἀπεφάσισεν νὰ τοῦ προσφέρῃ προαγωγὴν εἰς τὴν θέσιν τοῦ Ἀστυνόμου Β'. (Ἴδε ἐπιστολὴν Τεκμήριον 2). Ὡς ἦτο φυσικὸν ὁ δεύτερος αἰτητὴς ἀπεδέχθη τὴν προσφερθεῖσαν εἰς αὐτὸν προαγωγὴν εἰς τὴν θέσιν τοῦ Ἀστυνόμου Β' διὰ ἐπιστολῆς του πρὸς τὸν Γενικὸν Διευθυντὴν τοῦ Ὑπουργείου Ἐσωτερικῶν τὴν 6ην Ἰανουαρίου, 1977. Τὴν 25ην Ἰανουαρίου, 1977 ὁ δεύτερος αἰτητής, δικαιολογημένως, ἀπέστειλεν ἑτέραν ἐπιστολὴν πρὸς τὸν Ὑπουργὸν Ἐσωτερικῶν καὶ ἐτόνιζε τὴν ἀνησυχίαν του, διότι ὅπως γράφει:

" Μετὰ μεγάλης μου λύπης παρετήρησα ὅτι τὸ ὄνομα μου δὲν συμπεριελήφθην εἰς τὸν κατάλογον τῶν προαχθέντων Ἀξιωματικῶν ὁ ὁποῖος ἐδημοσιεύθη εἰς τὰς ΕΔ/ΙΙ/2 τῆς Ἀστυνομικῆς Δυνάμεως Κύπρου ἡμερομηνίας 10.1.77, παρ' ὅλον ὅτι συμφώνως ὑμετέρας ἐπιστολῆς ὑπὸ στοιχεῖα Ρ(Ρ) 191 καὶ ἡμερομηνίας 4.1.77 μοὶ ἐγνωρίσατε ὑμετέραν ἀπόφασιν καὶ προσφορὰν διὰ προαγωγήν μου εἰς τὴν θέσιν τοῦ Ἀστυνόμου Β' τὴν ὁποίαν εὐχαρίστως ἀπεδέχθην δι' ἡμετέρας ἀπαντητικῆς ὑπὸ ἡμερομηνίαν 6.1.77.

Συναφῶς, ἐπληροφορήθην μέσῳ τοῦ τύπου ὅτι ἡ προαγωγή μου ἀνεστάλη λόγῳ μερικῶν δημοσιευμάτων τὰ ὁποῖα παρουσιάσθησαν εἰς τὸν τύπον καὶ ὅτι ἐξετάζονται νέα πληροφοριακὰ στοιχεῖα τὰ ὁποῖα διεβιβάσθησαν εἰς τὸ Ὑπουργεῖον ἐναντίον μου.

Ἐν προκειμένῳ ἐπιθυμῶ νὰ ἐκφράσω εἰς ὑμᾶς τὴν διαμαρ-

τυρίαν μου διὰ τὴν ἄδικον μεταχείρησιν τῆς ὁποίας ἔτυχον καὶ τυγχάνω, ὑποβάλλω δὲ τὴν παροῦσαν διαμαρτυρίαν μου ἁπλῶς καὶ μόνον διὰ νὰ ὑπερασπίσω τὴν τιμήν, ἀξιοπρέπειαν καὶ τὰ δίκαια μου καὶ οὐχὶ ἐκ προθέσεως νὰ ἀντιδικήσω μετὰ τῆς ὑμετέρας Ἐντιμότητος ἢ τοῦ Ἀρχηγοῦ τῆς Ἀστυνομίας, πρόσωπα τὰ ὁποῖα βαθύτατα σέβομαι καὶ ἐκτιμῶ.

Ἐπὶ τοῦ παρόντος ἕνα μόνο πρᾶγμα ἔχω νὰ δηλώσω Ἔντιμε Κύριε Ὑπουργὲ Οὔτε ποτὲ πραξικοπηματίας ὑπῆρξα ἀλλ' οὔτε καὶ εἶμαι'."

Τὴν 8ην Φεβρουαρίου, 1977, ὁ Γενικὸς Διευθυντὴς τοῦ Ὑπουργείου Ἐσωτερικῶν εἰς ἀπάντησιν πρὸς τὸν δεύτερον αἰτητὴν λέγει:

" Ἐνετάλην παρὰ τοῦ Ὑπουργοῦ Ἐσωτερικῶν νὰ ἀναφερθῶ εἰς τὴν γενομένην πρὸς ὑμᾶς προσφορὰν ὑπ' ἀρ. Φακ. P(P) 191 τῆς 4ης Ἰανουαρίου 1977 διὰ προαγωγὴν εἰς τὴν θέσιν τοῦ Ἀστυνόμου Β' καὶ νὰ σᾶς πληροφορήσω ὅτι ὁ Ὑπουργὸς Ἐσωτερικῶν ἀνέστειλε τὴν προαγωγήν σας μέχρι τῆς διερευνήσεως πληροφοριακῶν καθ' ὑμῶν στοιχείων ἅτινα ἐλήφθησαν εἰς τὸ Ὑπουργεῖον τοῦτο."

Ὁ δεύτερος αἰτητὴς αἰσθανόμενος πικρίαν, ὡς ἦτο φυσικόν, κατέθεσεν προσφυγὴν ἐνώπιον τοῦ Ἀνωτάτου Δικαστηρίου τὴν 21ην Ἀπριλίου, 1977, καὶ τὸ περιεχόμενον τῆς αἰτήσεως του καὶ νομικοὶ λόγοι εἶναι οἱ ἴδιοι μὲ ἐκείνους τοὺς ὁποίους ὑπέβαλεν εἰς τὴν προσφυγὴν του ὑπ' Ἀριθμὸν 111/77 ὁ ἀδελφὸς του, ὁ πρῶτος αἰτητής. Εἶναι ἐνδεικτικὸν ἀπὸ τὰ γεγονότα τῶν δύο προσφυγῶν ὅτι ὁ πρῶτος αἰτητὴς ἐνεγράφη ὡς ἀστυνομικὸς τὴν 1ην Φεβρουαρίου, 1944, καὶ ὁ δεύτερος αἰτητὴς κατετάγη εἰς τὰς τάξεις τῆς ἀστυνομίας τὴν 1ην Ὀκτωβρίου, 1949· καὶ οἱ δύο προήχθησαν, ἀφοῦ ὑπηρέτησαν διὰ μακρὰν περίοδον. Τὴν 7ην Μαΐου, 1977, ὁ δικηγόρος τῆς Δημοκρατίας, κ. Ἀριστοδήμου ἰσχυρίσθη ὅτι ἡ ἀπόφασις τῆς ἀναστολῆς τῶν διορισμῶν τῶν δύο αἰτητῶν ἐλήφθη ἀπὸ τὸν Ὑπουργὸν Ἐσωτερικῶν καὶ Ἀμύνης ἐντὸς τῶν προνοιῶν τοῦ Ἄρθρου 13 τοῦ περὶ Ἀστυνομίας Νόμου Κεφάλαιον 285, ὡς ἐπίσης καὶ συμφώνως τῶν νομικῶν ἀρχῶν αἱ ὁποῖαι διέπουν τὴν ἀναστολὴν ἢ/καὶ ἀκύρωσιν τῶν διοικητικῶν πράξεων διὰ λόγους δημοσίου συμφέροντος καὶ οἱ ὁποῖοι ἐλήφθησαν ἐντὸς λογικῶν χρονικῶν ὁρίων ἀπὸ τὴν ἡμέραν τῆς προσφορᾶς τῆς προαγωγῆς. Τὰ γεγονότα τὰ ὁποῖα ὥθησαν τὸν Ὑπουργὸν Ἐσωτερικῶν καὶ Ἀμύνης εἰς τὸ νὰ ἀναστείλη τὴν προαγωγὴν καὶ

τῶν δύο αἰτητῶν περιέχονται εἰς τοὺς λόγους τῆς ἐνστάσεως τῶν προσφυγῶν οἱ ὁποῖοι ἀφήνουν νὰ νοηθῇ ὅτι ὁ Ὑπουργὸς Ἐσωτερικῶν καὶ Ἀμύνης ἔλαβεν πληροφορίας οὐσιαστικοῦ περιεχομένου ἢ/καὶ γεγονότα τὰ ὁποῖα ἔχουν σχέσιν μὲ τὸ θέμα πίστεως καὶ ἀφοσιώσεως πρὸς τὴν νομιμότητα καὶ τάξιν, πρὸς τὰς νομικὰς ἀρχὰς τῆς πολιτείας καὶ κατὰ τὴν διάρκειαν τοῦ πραξικοπήματος τοῦ Ἰουλίου τοῦ 1974. Εἰς τὴν παράγραφον 8 τῶν γεγονότων ὁ συνήγορος κ. Ἀριστοδήμου λέγει ὅτι ἐπὶ τῇ βάσει τῶν ὡς ἄνω πληροφοριῶν ὁ Ὑπουργὸς Ἐσωτερικῶν ἀπεφάσισε νὰ ἀναστείλῃ τὰς προαγωγὰς τῶν αἰτητῶν καὶ ἐπληροφόρησεν τούτους διὰ ἐπιστολῆς ἡμερομηνίας 8 Φεβρουαρίου, 1977. Ὡς ἦτο φυσικὸν τὴν 30ην Μαΐου, 1977, ὁ συνήγορος καὶ τῶν δύο αἰτητῶν, κ. Γεώργιος Κακογιάννης, κατέθεσεν αἴτησιν εἰς τὴν ὁποίαν ἐζήτη νὰ πληροφορηθῇ λεπτομερείας τῶν γεγονότων ἢ τῶν ζητημάτων τὰ ὁποῖα ἀναφέρονται εἰς τὴν παράγραφον 7 τῶν γεγονότων ἐπὶ τῶν ὁποίων ἐστηρίχθη ἡ ἔνστασις καὶ εἰδικώτερον πληροφορίας ἢ καὶ γεγονότα τὰ ὁποῖα ἄφηναν ὑπονοούμενα ἐναντίον τῶν αἰτητῶν διὰ ἔλλειψιν πίστεως καὶ προσηλώσεως εἰς τὸν νόμον καὶ τὴν ἔννομον τάξιν καὶ τὰς νομικὰς ἀρχὰς τῆς πολιτείας τόσον ἐνωρίτερον ὅσον καὶ κατὰ τὴν διάρκειαν τοῦ πραξικοπήματος τοῦ Ἰουλίου τοῦ 1974. Τὴν 14ην Νοεμβρίου, 1977, ὁ συνήγορος τῶν καθ' ὧν ἡ αἴτησις κατέθεσεν λεπτομερείας τῶν γεγονότων καὶ πληροφοριῶν αἱ ὁποῖαι ἀναφέρονται εἰς τὴν παράγραφον 7 τῆς ἐνστάσεως καὶ αἱ ὁποῖαι ἔχουν ὡς ἀκολούθως:

"1. Τὴν 25-7-1974 ἐτοποθετήθη ὡς Ἀστυνομικὸς Διευθυντὴς Πάφου, δυνάμει ἐγκυκλίου τοῦ ὑπὸ τῶν πραξικοπηματιῶν διορισθέντος ''Ἀρχηγοῦ'' τῆς Ἀστυνομίας, προαχθεὶς εἰς ἀναπληρωτὴν Ἀστυνόμον Β', εἰς ἀντικατάστασιν τοῦ προβάλοντος ἀντίστασιν κατὰ τῶν πραξικοπηματιῶν Ἀστυνομικοῦ Διευθυντοῦ Πάφου κ. Γαλάζη.

2. Τὴν 29-7-74, ὁ αἰτητὴς προέβη δι' ἐγκυκλίου αὐτοῦ, εἰς ριζικὰς μεταθέσεις νομιμοφρόνων μελῶν τῆς Δυνάμεως, μὲ στόχον τὴν ἐπάνδρωσιν καιρίων θέσεων ὑπὸ πραξικοπηματιῶν.

3. Τὴν 1-8-74 ὑπέβαλεν ἔντυπα P. 202, συστήσας δι' ἀναπληρωματικοὺς διορισμοὺς μέλη τῆς Δυνάμεως γνωστὰ δι' ἐνεργὸν ἀνατρεπτικὴν δρᾶσιν κατὰ τοῦ Κράτους, μεταξὺ τῶν ὁποίων 8 εἶχον ἀπολυθῇ ὑπὸ τῆς νομίμου Κυβερνήσεως διὰ λόγους δημοσίου συμφέροντος. Συστήνων τούτους, ὁ αἰτητὴς ἔγραφε (διὰ μερικοὺς) Λόγοι διὰ συστάσεις:

" 'Απελύθη ἀπὸ τὴν 'Αστυνομικὴν δύναμιν διὰ πολιτικοὺς λόγους .....
Συστήνεται διὰ διορισμὸν εἰς τὴν τάξιν τοῦ .....
ὡς εἰδικὴ περίπτωσις καὶ κατὰ τὴν διάρκειαν τῆς ὑπηρεσίας του εἰς ἐκεῖνο τὸ Τμῆμα.' "

'Επισυνάπτονται ΠΑΡΑΡΤΗΜΑΤΑ 1 ἕως 13."

Οἱ νομικοὶ λόγοι οἱ ὁποῖοι ἠγέρθησαν καὶ εἰς τὰς δύο προσφυγὰς ἦσαν:

(1) 'Εφ' ὅσον ἐγένετο ἐκ μέρους τοῦ 'Υπουργοῦ 'Εσωτερικῶν προσφορὰ προαγωγῆς εἰς τοὺς δύο αἰτητὰς εἰς τὴν θέσιν 'Ανωτέρου 'Αστυνόμου καὶ 'Αστυνόμου Β' καὶ τὴν ὁποίαν οἱ αἰτηταὶ ἀπεδέχθησαν ἐγγράφως, ἡ προαγωγὴ ἐγένετο ἀποτελεσματικὴ καὶ δεσμευτικὴ καὶ δὲν ἦτο δυνατὸν νὰ ἀκυρωθῇ ἢ νὰ ἀνακληθῇ ὑπὸ τοῦ 'Υπουργοῦ 'Εσωτερικῶν ἐκτὸς διὰ πειθαρχικὸν παράπτωμα διὰ τὸ ὁποῖον οἱ αἰτηταὶ νὰ κατηγορηθοῦν, νὰ δικασθοῦν καὶ νὰ καταδικασθοῦν συμφώνως τῶν προνοιῶν τοῦ νόμου. "Ενεκα τούτου ὁ 'Υπουργὸς 'Εσωτερικῶν δὲν ἠδύνατο νομικῶς νὰ ἀνακαλέσῃ τὴν λειτουργίαν τῆς προαγωγῆς,

(2) 'Η διοικητικὴ πρᾶξις τῆς προαγωγῆς εἶναι σύμβασις ἢ καὶ μονομερὴς σύμβασις τὴν ὁποίαν ὁ 'Υπουργὸς 'Εσωτερικῶν δὲν ἔχει τὸ δικαίωμα νὰ ἀκυρώσῃ ἢ νὰ ἀνακαλέσῃ διὰ μονομεροῦς πράξεως.

"Οπως ἀνέφερα προηγουμένως αἱ δύο αἰτήσεις στηρίζονται ἐπὶ τῶν ἰδίων νομικῶν ἀρχῶν. Τὴν 14ην 'Απριλίου, 1978, ὁ κ. Κακογιάννης ὑπέβαλεν ὅτι, αἱ προαγωγαὶ ἀξιωματικῶν ρυθμίζονται ἀπὸ τὸν Περὶ τῆς 'Αστυνομίας Νόμον Κεφάλαιον 285, ὡς ἐτροποποιήθη ὑπὸ διαφόρων νόμων καὶ εἰδικώτερον ὑπὸ τῶν νόμων 19/60, 21/64 καὶ 29/66. Τὸ "Αρθρον 13(1) ὡς ἐτροποποιήθη ἀναγιγνώσκει: "Οἱ ἀξιωματικοὶ θὰ διορίζωνται, θὰ προάγωνται καὶ θὰ ἀπολύωνται ἀπὸ τὸν 'Υπουργὸν 'Εσωτερικῶν."

Δὲν χωρεῖ καμμίαν ἀμφιβολίαν ὅτι καὶ οἱ δύο αἰτηταὶ ἐμπίπτουν ἐντὸς τῶν προνοιῶν τοῦ "Αρθρου 13(1) τοῦ Κεφαλαίου 285. Περαιτέρω ἐτονίσθη ὅτι συμφώνως τοῦ "Αρθρου 10 τοῦ Νόμου ἐγένοντο κανονισμοὶ διὰ τὸ θέμα τῶν προαγωγῶν ὡς ἐπίσης γενικοὶ κανονισμοὶ οἱ ὁποῖοι προνοοῦν διὰ ζητήματα πειθαρχικῶν ἀδικημάτων ὡς ἐπίσης καὶ τὴν συμπεριφορὰν τῶν μελῶν τῆς 'Αστυ-

νομικῆς Ὑπηρεσίας. Οἱ Κανονισμοὶ περὶ πειθαρχικῶν ἀδικημάτων ὑφίστανται καὶ ἐὰν πράγματι ἐγένοντο πειθαρχικὰ ἀδικήματα ἐκ μέρους τῶν δύο αἰτητῶν, τότε ἡ διαδικασία ἡ ὁποία ὑποδεικνύεται ὑπὸ τῶν προνοιῶν τοῦ Νόμου καὶ τῶν κανονισμῶν, ὤφειλεν νὰ ἀκολουθηθῇ ὑπὸ τῆς διοικήσεως.

Ὁ κ. Κακογιάννης ἀγορεύων ὑπεστήριξεν ὅτι ἡ ἀνάκλησις ἡ ὁποία ἔγινε ὑπὸ τοῦ Ὑπουργοῦ Ἐσωτερικῶν εἶναι ζήτημα τὸ ὁποῖον ἀνάγεται εἰς τὴν σφαῖραν τοῦ δημοσίου δικαίου. Ἐπειδή, οὐδεμία πρόνοια ὑπάρχει εἰς τὸν περὶ Ἀστυνομίας Νόμον ὡς πρὸς τὸ ποία εἶναι ἡ σχέσις μεταξὺ τῆς διοικήσεως καὶ τῶν δύο αἰτητῶν καὶ τί εἶδος διοικητικῆς πράξεως ἢ συμβάσεως ἐγένετο μὲ τὴν προσφορὰν ἐκ μέρους τοῦ Ὑπουργοῦ Ἐσωτερικῶν προαγωγῆς εἰς τὴν θέσιν Ἀνωτέρου Ἀστυνόμου καὶ Ἀστυνόμου Β' καὶ τὴν ἀποδοχὴν αὐτῆς ἐκ μέρους τῶν αἰτητῶν, νομίζω ὅτι εἶναι χρήσιμο νὰ ἀναφερθῶ εἰς τὴν ὑπόθεσιν Παντελίδου ἐναντίον τῆς Δημοκρατίας, 4 R.S.C.C. 100, 104 καὶ 105 ὅπου τὸ Δικαστήριον ἀπεφάνθη ὅτι ὁ τερματισμὸς τῆς ὑπηρεσίας τῆς αἰτητρίας ἦτο θέμα τὸ ὁποῖον ὑπήγετο εἰς τὴν σφαῖραν τοῦ δημοσίου δικαίου καὶ οὐχὶ τοῦ ἰδιωτικοῦ, (ἴδε Γιάννης Σταματίου ἐναντίον τῆς Ἀρχῆς Ἠλεκτρισμοῦ Κύπρου, 3 R.S.C.C. 44 εἰς τὴν σελίδα 46), καὶ ὡς ἐκ τούτου χωροῦσε προσφυγὴν ἐναντίον τοῦ τερματισμοῦ τῶν ὑπηρεσιῶν τῆς αἰτητρίας ἐνώπιον τοῦ Δικαστηρίου συμφώνως τοῦ Ἄρθρου 146. Ἐπίσης εἰς τὴν ὑπόθεσιν Πασχαλίδου ἐναντίον τῆς Δημοκρατίας (1969) 3 C.L.R. 297 τὸ Δικαστήριον ἐν τῇ ἀσκήσει τῆς ἀναθεωρητικῆς αὐτοῦ δικαιοδοσίας ἀπεφάσισε ὅτι ὁ διὰ συμβάσεως διορισμὸς τῆς ἐφεσειούσης εἰς θέσιν τῆς στοιχειώδους ἐκπαιδεύσεως ἦτο ζήτημα ἐμπῖπτον ἐντὸς τῆς δικαιοδοσίας τοῦ δημοσίου δικαίου καὶ ὡς ἐκ τούτου τὸ Δικαστήριον εἶχε δικαιοδοσίαν νὰ ἐκδικάσῃ τὴν προσφυγὴν συμφώνως τοῦ Ἄρθρου 146 τοῦ Συντάγματος. Τὸ γεγονὸς ὅτι ὁ διορισμὸς ἔγινε διὰ συμβάσεως δὲν ἠδύνατο νὰ ἀλλάξῃ τὴν οὐσιαστικὴν αὐτοῦ φύσιν. Συνεπῶς εἶμαι τῆς γνώμης συμφώνως καὶ μὲ τὰς ὡς ἄνω αὐθεντίας, ὅτι ἡ τοιαύτη ἀνάκλησις εἶναι ζήτημα τὸ ὁποῖον ἐμπίπτει ἐντὸς τῆς σφαίρας τοῦ δημοσίου δικαίου.

Ὡς ἐλέχθη εἰς τὰ θέματα ἀστυνομίας ἡ Νομολογία κατ' ἀναλογίαν ἀκολουθεῖ τὰς διατάξεις τοῦ Ἄρθρου 44 τοῦ περὶ Δημοσίας Ὑπηρεσίας Νόμου 33/67, τὸ ὁποῖον διὰ τῆς ὑποπαραγράφου 6 ἀναγιγνώσκει: "Αἱ προαγωγαὶ δημοσιεύονται εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας". Εἶναι ἐπίσης χρήσιμο νὰ προσθέσω ὅτι τὸ Ἄρθρον 13(1) τοῦ Κεφαλαίου 285 ὡς τοῦτο ἐτροποποιήθη

εἶναι γενικῆς φύσεως· εἰς τὸ θέμα προαγωγῶν τῆς ἀστυνομίας λέγει μόνον ὅτι: "Οἱ ἀστυνομικοὶ θὰ διορίζωνται, προβιβάζωνται καὶ ἀπολύωνται ὑπὸ τοῦ 'Υπουργοῦ." Κατὰ συνέπειαν, εἶμαι τῆς γνώμης ὅτι, ὅταν ὁ 'Υπουργὸς 'Εσωτερικῶν ἀπεφάσισε νὰ προσφέρη προαγωγὴν εἰς τοὺς δύο αἰτητάς, καὶ προτοῦ οἱ δύο αἰτηταὶ ἀποδεχθοῦν τὴν προσφορὰν διὰ νὰ συμπληρωθῆ ἡ διοικητικὴ πρᾶξις, τότε μόνον ἡ συμφωνία μεταξὺ τῆς διοικήσεως καὶ τῶν αἰτητῶν ἠδύνατο νὰ ἀνακληθῆ. 'Εὰν χρειάζεται καὶ ἄλλη νομικὴ αὐθεντία κατὰ τὴν γνώμην μου ἡ ὑπόθεσις *Παναγίδης ἐναντίον τῆς Δημοκρατίας* (1972) 3 C.L.R. 467 ὑποστηρίζει τὴν ὡς ἄνω θέσιν εἰς τὴν σελίδα 483, ὅτι καὶ ἡ παράλειψις δημοσιεύσεως εἰς τὴν 'Επίσημον 'Εφημερίδα δὲν ἀποτελεῖ κώλυμα εἰς τὸ θέμα προαγωγῆς ἐφ' ὅσον ἡ νομικὴ τοποθέτησις τῆς προαγωγῆς ἀρχίζει ἀπὸ τὴν ἡμέραν τῆς προσφορᾶς καὶ ἀποδοχῆς της, καὶ κατὰ συνέπειαν δὲν δύναται ἐλευθέρως νὰ ἀνακληθῆ. Ἴδε ἐπίσης *Τζαβέλλας καὶ ἄλλος ἐναντίον τῆς Κυπριακῆς Δημοκρατίας* (1975) 3 C.L.R. 490. Εἰς τὴν ὑπόθεσιν *Τζαβέλλας* τὸ Δικαστήριον ἀφοῦ ἔλαβεν ὑπ' ὄψιν του τὸν Κανονισμὸν 11 τῶν περὶ 'Αστυνομίας (Γενικοὶ Κανονισμοὶ) τοῦ 1958 διὰ πειθαρχικοὺς σκοποὺς, κατέληξεν εἰς τὸ συμπέρασμα ὅτι ἐφ' ὅσον ὁ 'Αρχηγὸς τῆς 'Αστυνομίας δὲν διέταξεν νὰ γίνη πραγματικὴ ἔρευνα διὰ νὰ ἀποδειχθῆ ἡ ἀλήθεια διὰ τοὺς ἰσχυρισμοὺς ἐναντίον τοῦ αἰτητοῦ καὶ νὰ τοῦ δοθῆ ἡ εὐκαιρία νὰ ἀκουσθῆ καὶ νὰ ὑπερασπισθῆ, εἶναι οὐσιώδης ἀρχὴ τοῦ διοικητικοῦ δικαίου ὅτι ἐφ' ὅσον μία ἔρευνα ἐναντίον ὑπαλλήλου ἐγένετο ἀλλὰ συμφώνως συμβουλῆς δὲν ἐλήφθησαν πειθαρχικὰ μέτρα ἢ ἄλλα μέτρα ἐναντίον ἢ ἐφ' ὅσον τοιαῦτα μέτρα ἐλήφθησαν ἀλλὰ ὁ ἀξιωματικὸς ἠθωώθη, τοιαῦτα γεγονότα δὲν δύνανται νὰ ληφθοῦν ὑπ' ὄψιν διὰ σκοποὺς προαγωγῆς.

Περαιτέρω ἐλέχθη ὅτι τὸ γεγονὸς ὅτι πειθαρχικὴ διαδικασία παραμένει ἐναντίον ἑνὸς δημοσίου λειτουργοῦ χωρὶς νὰ ὑπάρχουν οὐσιώδη κριτήρια διὰ βάσιν τῶν κατηγοριῶν ποὺ τοῦ προσάπτονται, δὲν δύναται ἐπίσης νὰ λαμβάνεται ὑπ' ὄψιν διὰ λόγους προαγωγῆς. Περαιτέρω ἐτονίσθη ὅτι ἐφ' ὅσον αἱ κατηγορίαι ἐναντίον τῶν αἰτητῶν ἄφηναν νὰ νοηθῆ ὅτι ὑπῆρξεν παράβασις καθήκοντος ἡ ὁποία ἀπέρρεε ἀπὸ τὰς προαναφερθείσας πράξεις ἢ παραλείψεις καὶ ἐφ' ὅσον δὲν ἠσκήθη πειθαρχικὴ διαδικασία ἐναντίον του, ὁ ἀρχηγὸς τῆς 'Αστυνομίας ὁ ὁποῖος ἀπεφάσιζε διὰ τὰς προαγωγὰς τῶν αἰτητῶν δὲν ἠδύνατο νὰ λάβῃ ὑπ' ὄψιν τὸ γεγονὸς ἐκεῖνο διότι ὑπὸ τὰς περιστάσεις ἦτο ἄσχετον. 'Εν συνεχείᾳ ἐλέχθη ὅτι ὅταν μία διοικητικὴ ἀπόφασις στηρίζεται ἐπὶ ἀσχέτων γεγονότων, ὅπως εἰς τὴν παροῦσαν περίπτωσιν, ἡ τοιαύτη ἀπό-

φασις πρέπει νὰ θεωρεῖται ὅτι εἶναι ἄκυρος καὶ ἄνευ νομικῆς ὑποστάσεως. Ἴδε ἐπίσης διὰ θέμα ἀνακλήσεως Συμπλήρωμα Νομολογίας 1969–1970 εἰς σελίδα 191 παράγραφος 441, ἡ ὁποία τονίζει ὅτι:

> "Ἀναστολὴ ἐκτελέσεως τῆς πράξεως ἄνευ χρονικοῦ περιορισμοῦ ἰσοδυναμεῖ πρὸς ἀνάκλησιν αὐτῆς, Σ.τ.Ε. 1113/1970 NoB. 19. 104, Σ.τ.Ε. 2879/1969 NoB. 18. 491."

Ὁ καθηγητὴς Κυριακόπουλος εἰς τὸ σύγγραμμα "Διοικητικὸν Ἑλληνικὸν Δίκαιον" Β' Γενικὸν Μέρος Ἔκδοσις 4, 1961, πραγματεύεται τὴν ἀνάκλησιν τῶν διοικητικῶν πράξεων καὶ λέγει εἰς τὴν σελίδα 403:

> "Ἡ διοικητικὴ πρᾶξις, ὡς γνωστόν, καθορίζει, ὡς καὶ ἡ δικαστικὴ ἀπόφασις, τὶ δέον νὰ ἰσχύσῃ ὡς δίκαιον ἐν τῇ ἀτομικῇ περιπτώσει. Ἀλλ' ἔχει ἡ διοικητικὴ πρᾶξις τὴν αὐτὴν ἰσχύν, ἣν κέκτηται καὶ ἡ δικαστικὴ ἀπόφασις; Ἡ διοικητικὴ πρᾶξις ἔχει δεδικασμένου δύναμιν; Ἡ ἔννοια τοῦ δεδικασμένου, γνωστὴ ἐν τῷ δικονομικῷ δικαίῳ ἔγκειται εἰς τὴν ἰδιότητα τῆς δικαστικῆς ἀποφάσεως, ὅπως τὸ ἐξ αὐτῆς πηγάζον ὑπὲρ τῆς ἀληθείας τεκμήριον εἶναι ἀμάχητον καὶ μὴ δύναται νὰ ἀμφισβητηθῇ πλέον. Ἡ ἔννοια αὕτη, παρὰ τὰς διατυπωθείσας ἀντιρρήσεις, οὐδεὶς σοβαρὸς λόγος συντρέχει, ὅπως μὴ χρησιμοποιηθῇ καὶ ἐπὶ τῶν διοικητικῶν πράξεων. Δυνάμεθα, ἑπομένως, καὶ ἐπ' αὐτῶν νὰ διακρίνωμεν μεταξὺ τυπικοῦ καὶ οὐσιαστικοῦ δεδικασμένου.
>
> α. Τυπικὸν δεδικασμένον ἀναγνωρίζεται εἰς ἐκείνην τὴν πρᾶξιν, ἥτις κατέστη ἀπρόσβλητος δι' οἱουδήποτε ἐνδίκου μέσου ἐκ μέρους τοῦ ἐνδιαφερομένου, ὅστις δὲν δύναται πλέον ν' ἀντιστῇ κατὰ τῆς ἐκτελέσεως τῆς πράξεως. Κατ' ἀρχὴν πρᾶξίς τις τῆς διοικήσεως εἶναι δυνατὸν νὰ προσβληθῇ ὑπὸ τοῦ ἐνδιαφερομένου ἐντὸς ὡρισμένης προθεσμίας, εἴτε ἐνώπιον τῆς ἀνωτέρας διοικητικῆς ἀρχῆς, εἴτε ἐνώπιον διοικητικοῦ τινος δικαστηρίου. Παρελθούσης τῆς προθεσμίας, ἀποκλείεται ἡ προσφυγή. Ἡ πρᾶξις εἶναι πλέον ἰσχυρὰ διὰ τὸν πολίτην, ἐφ' ὅσον ἡ ἐκδοῦσα αὐτὴν ἀρχὴ ἢ ἡ ἱεραρχικῶς προϊσταμένη ταύτης δὲν προβαίνει εἰς ἀνάκλησιν ἢ ἀναίρεσιν τῆς πράξεως. Τὸ ἀπρόσβλητον καὶ ἐκτελεστὸν τῆς πράξεως ἐκφράζει ὁ κανὼν res judicata jus facit inter partes.
>
> β. Ἀλλ' ἡ διοικητικὴ πρᾶξις κέκτηται, ἐπίσης, καὶ δύναμιν

οὐσιαστικοῦ δεδικασμένου; Τὸ οὐσιαστικὸν δεδομένον τῆς δικαστικῆς ἀποφάσεως εἶναι σκόπιμον δημιούργημα τοῦ δικονομικοῦ δικαίου, προϋποθέτει δὲ τὸ τυπικόν. Ἡ ἔννοια τοῦ οὐσιαστικοῦ δεδικασμένου ἔγκειται ἐν τούτῳ· τὸ περιεχόμενον τῆς ἀποφάσεως δεσμεύει οὐ μόνον τὸν πολίτην ἀλλὰ καὶ τὸ δικαστήριον, τοῦθ' ὅπερ ἐκφράζει ὁ κανὼν res judicata jus facit inter omnes. Ἡ τοιαύτη δέσμευσις διττῶς δύναται νὰ ἑρμηνευθῇ· εἴτε ὡς ἀπαγόρευσις πρὸς τὰ δικαστήρια, χάριν αὐτοῦ τούτου τοῦ κύρους των—ne varia judicetur—ν' ἀπασχολῶνται ἐκ δευτέρου μὲ τὴν ἐξέτασιν ὑποθέσεως, ἐφ' ἧς ἤδη ἀπεφάνθησαν (ἀπόλυτον δεδικασμένον)· εἴτε ὡς συνέπεια τοῦ δικαιώματος τοῦ διαδίκου ἐπὶ τὴν διατήρησιν τῆς ἐπωφελοῦς δι' αὐτὸν ἀποφάσεως (σχετικὸν δεδικασμένον). Κέκτηται λοιπὸν καὶ ἡ διοικητικὴ πρᾶξις τὴν δύναμιν οὐσιαστικοῦ δεδικασμένου ὑπὸ τὴν ἔννοιαν, ὅτι τὸ περιεχόμενον αὐτῆς δεσμεύει τὸν τε πολίτην καὶ τὴν διοικητικὴν ἀρχήν; Κατ' ἀκολουθίαν, δὲν ἐπιτρέπεται ἀνάκλησις τῆς ἰσχυούσης πράξεως;

Τὸ ζήτημα δέον ν' ἀντιμετωπισθῇ ἀρχικῶς μὲν ἐπὶ τῇ βάσει τῆς κειμένης νομοθεσίας, εἶτα δὲ ἀπὸ θεωρητικῆς ἀπόψεως. Διότι, αἱ περὶ ἀνακλήσεως ἀρχαί, τὰς ὁποίας διέπλασαν ἡ θεωρία καὶ ἡ νομολογία, εἶναι δυνατὸν νὰ τύχωσιν ἐφαρμογῆς μόνον ἐὰν καὶ ἐφ' ὅσον ἐλλείπῃ διάταξις ρητῶς ἐπιτρέπουσα ἢ ἀπαγορεύουσα εἰς τὴν διοίκησιν τὴν ἀνάκλησιν ἰδίας αὐτῆς πράξεως[1]."

Δὲν χωρεῖ καμμία ἀμφιβολία ὅτι αἱ διοικητικαὶ ἐν γένει ἀρχαὶ δὲν ἐπιτρέπεται νὰ ἀνακαλῶσι νομίμους αὐτῶν πράξεις ἐξ ὧν ἀπέρρευσαν κεκτημένα δικαιώματα ὑπαλλήλων ἢ ἀστυνομικῶν. Περαιτέρω εἶναι ἐξ ἴσου ὀρθὸν νὰ τονισθῇ ὅτι ἡ πρᾶξις τῆς διοικήσεως δὲν δύναται νὰ ἀνακληθῇ ἐπ' ἀόριστον ἐφ' ὅσον αὐτὸ ἰσοδυναμεῖ μὲ τὴν ἀκύρωσιν τῆς πράξεως.

Οἱ λόγοι δημοσίου συμφέροντος, τοὺς ὁποίους ὁ Ὑπουργὸς Ἐσωτερικῶν ἰσχυρίσθη δὲν εὐσταθοῦν, ἐφ' ὅσον αἱ προαγωγαὶ ἦσαν νόμιμοι, ὅπως ὑποστηρίζουν καὶ μερικαὶ αὐθεντίαι τὰς ὁποίας οἱ συνήγοροι ἀνέφεραν. Θὰ ἦτο ἐπίσης ἀδιανόητον νὰ λεχθῇ ὅτι ἡ διοίκησις θὰ ἠδύνατο μετὰ τὰς προαγωγὰς νὰ ἐπανέλθῃ

1. Πρβλ. Σ. Ε. 661/1940,57,281/1944,1189/1949,124,1529/1952. Πρβλ. καὶ Σ. Ε. 543/1939.

διότι ἐλήφθησαν νέαι πληροφορίαι, καὶ νὰ δικαιολογηθῇ λέγουσα ὅτι: " Ἡ ἀπόφασις μας νὰ σὲ προάγωμεν εἰς τὴν θέσιν τὴν ὁποίαν σήμερον ἔχεις ἦτο ἐσφαλμένη καὶ παίρνομε τὴν θέσιν διότι εἶναι διὰ τὸ δημόσιον συμφέρον ὅτι ὤφειλες νὰ μὴ εὑρίσκεσαι εἰς τὴν θέσιν τὴν ὁποίαν κατέχεις".

Ἐπὶ πλέον εἶναι ἐνδεικτικὸν ὅτι αἱ πράξεις ἀναδρομικότητος τῆς ἀνακλήσεως νομίμων διοικητικῶν πράξεων δείχνουν ὅτι εἶναι μόνον πράξεις αἱ ὁποῖαι συνεχίζουν ἀπὸ ἡμέραν εἰς ἡμέραν, καὶ κατὰ τὴν γνώμην μου, τότε ἡ διοίκησις δύναται νὰ ἐπεμβαίνῃ. Εἰδικώτερον εἰς τὸ θέμα προαγωγῶν ἐξυπακούεται, καὶ αὐθεντίαι ὑποστηρίζουν τὴν ἀρχὴν ταύτην, ὅτι ὁ κάτοχος τῆς θέσεως θὰ συνεχίσῃ νὰ τὴν κατέχῃ μέχρις ὅτου προβιβασθῇ καὶ πάλιν ἢ ἐγκαταλείψῃ τὴν ὑπηρεσίαν ἢ ἔχει ἀπολυθῇ ἀπὸ τὴν ὑπηρεσίαν ἢ διὰ ἄλλους λόγους. Ἴδε ἐπίσης ἐπὶ τοῦ θέματος τούτου τὸ Συμπλήρωμα Νομολογίας 1969–1971, τὴν παράγραφον 421 εἰς τὴν σελίδα 190. Καὶ διὰ τὴν πλάνην περὶ τὰ πράγματα τὰς παραγράφους 433, 434, 435, 437, 498, καὶ 39. Ἴδε ἐπίσης ἐγχειρίδια "Διοικητικοῦ Δικαίου" 1977 Ἔκδοσις, εἰς σελίδα 168 παράγραφον 174 ἡ ὁποία ἀναγιγνώσκει ὑπὸ τίτλον "Κατάργησις καὶ ἀνάκλησις τῆς διοικητικῆς πράξεως". Ἴδε ἐπίσης σελίδα 170 παράγραφον 176.

Ὁ καθηγητὴς Παπαχατζῆς εἰς τὸ βιβλίον του "Μελέται ἐπὶ τοῦ Δικαίου τῶν Διοικητικῶν Διαφορῶν" 4η Ἔκδοσις 1961, εἰς σελίδα 406 παράγραφον Δ τονίζει ὅτι:

> " Αἱ διοικητικαὶ ἐν γένει ἀρχαὶ δὲν ἐπιτρέπεται νὰ ἀνακαλῶσι νομίμους αὐτῶν πράξεις, ἐξ ὧν ἀπέρρευσαν κεκτημένα δικαιώματα ἰδιωτῶν. Τὸν γενικὸν κανόνα ἀποτελεῖ τὸ ἀνακλητὸν τῶν διοικητικῶν πράξεων. Ὁσάκις ὅμως ἡ νομίμως ἐκδοθεῖσα πρᾶξις εἶναι ὑποχρεωτικὴ διὰ τὴν δημοσίαν ἀρχὴν (ἐδεσμεύετο δηλαδὴ αὕτη ἐκ τοῦ νόμου νὰ τὴν ἐκδώσῃ) ἢ ὁσάκις ὁ νόμος τὴν χαρακτηρίζει ὡς 'ἀμετάκλητον' ἢ ὁσάκις ἡ πρᾶξις ἔχει δι' ὡρισμένους ἰδιώτας ἢ ὁμάδας ἰδιωτῶν 'συστατικὸν' χαρακτῆρα (ὡς π.χ. αἱ πράξεις διορισμοῦ, αἱ παρασχεθεῖσαι κατόπιν οὐσιαστικῆς κρίσεως ἐγκρίσεις κλπ.) καὶ ἐν γένει ὁσάκις ἔχουν ἀποκτηθῇ ὑπὸ διοικουμένων δικαιώματα ἐκ τῆς πράξεως, ἡ ἐκδοῦσα ἀρχὴ—οὐδὲ κατὰ μείζονα λόγον ἄλλη τις δημοσία ἀρχὴ—δὲν δύναται νὰ ἀνακαλέσῃ αὐτήν. Τοὐναντίον, αἱ παράνομοι διοικητικαὶ πράξεις δέον νὰ ἀνακαλῶνται, πλὴν ἂν ἔχῃ μεσολαβήσει χρόνος λίαν μακρὸς ἀπὸ τῆς ἐκδόσεως αὐτῶν. Ἀλλ' ἡ τοιαύτη πάροδος λίαν μακροῦ χρόνου δὲν κωλύει τὴν ἀνάκλησιν παρανόμου πράξεως, ἂν

λόγοι δημοσίας τάξεως ἢ δημοσίου συμφέροντος (ἄσχετοι πάντως πρὸς τὸ στενὸν οἰκονομικὸν τῆς δημοσίας διοικήσεως) ἐπιβάλλωσι τὴν τοιαύτην ἀνάκλησιν ἢ ἂν ἡ ἔκδοσις τῆς πράξεως εἶχε προκληθῆ δι' ἀπατηλῆς ἐνεργείας τῶν ἐνδιαφερομένων ἰδιωτῶν, π.χ. διὰ τῆς ἐν γνώσει ὑποβολῆς ἀνακριβῶν στοιχείων πρὸς τὴν οἰκείαν δημοσίαν ἀρχήν."

Ὁ καθηγητὴς Στασινόπουλος εἰς τὰ "Μαθήματα Διοικητικοῦ Δικαίου" 1957, ἀσχολούμενος μὲ τὸ θέμα "Ἡ Ἀνάκλησις τῶν Διοικητικῶν Πράξεων" τονίζει εἰς τὴν σελίδα 256 ὅτι:

"Ἡ ἐπὶ μακρὸν ὅμως χρόνον ἀποχὴ τοῦ διοικουμένου ἀπὸ τῆς χρήσεως τῆς πράξεως, ἑρμηνευομένη ὡς σιωπηρὰ παραίτησις ἀπὸ τοῦ παρεχομένου διὰ τῆς πράξεως δικαιώματος καὶ ἄρα ὡς συναίνεσις διὰ τὴν ἀνάκλησιν, συνιστᾷ ὑφ' ὡρισμένας συνθήκας, λόγον στηρίζοντα τὴν ἀνάκλησιν τῆς πράξεως. Πρὸ τῆς ἐκδόσεως ὅμως τῆς περὶ ἀνακλήσεως πράξεως, δι' ἧς ἡ Διοίκησις θέλει δηλώσει τὴν βούλησιν αὐτῆς ὅπως ἡ πρᾶξις παύσῃ ἰσχύουσα, ἡ πρᾶξις αὕτη παραμένει ἰσχυρά. Οὕτως ἡ παράλειψις τοῦ διορισθέντος εἰς δημοσίαν θέσιν ὅπως ἀναλάβῃ ὑπηρεσίαν, ἀποτελεῖ μὲν σιωπηρὰν πλὴν σαφῆ συναίνεσιν εἰς τὴν ἀνάκλησιν τοῦ διορισμοῦ[1], δὲν εἶναι ὅμως ἱκανὴ ἵνα ἀφ' ἑαυτῆς θέσῃ ἐκτὸς ἰσχύος τὴν πρᾶξιν τοῦ διορισμοῦ.

Ἐξαίρεσιν ἀποτελεῖ ἡ περίπτωσις, καθ' ἣν ἡ πρᾶξις περιέχει ἐν ἑαυτῇ ὁρισμὸν ἀνατρεπτικῆς προθεσμίας, ἐντὸς τῆς ὁποίας ὀφείλει νὰ τεθῇ εἰς ἐφαρμογήν. Ἐν τῇ περιπτώσει ταύτῃ ἡ ἐν ἀχρηστίᾳ ἐξάντλησις τῆς προθεσμίας ταύτης θέτει αὐτοδικαίως ἐκτὸς ἰσχύος τὴν μὴ ἐκτελεσθεῖσαν πρᾶξιν."

Ἐλέχθη περαιτέρω ὅτι ἡ διοίκησις ὀφείλει κατ' ἀρχὴν νὰ ἔχῃ εἰς χεῖρας της ἀρκετὰ στοιχεῖα ἐναντίον τῶν αἰτητῶν διὰ τὴν ἀνάκλησιν τῆς διοικητικῆς πράξεως· καὶ διὰ νὰ δύναται ἡ διοίκησις νὰ ἐπικαλεσθῇ τὸ δημόσιον συμφέρον. Δὲν ἔχω καμμίαν ἀμφιβολίαν ἐπὶ τοῦ προκειμένου ὅτι ἡ διοίκησις ὤφειλε νὰ εἶχε τοιαύτας πληροφορίας αἱ ὁποῖαι νὰ ἐδικαιολόγουν ἀπόφασιν, καὶ ὄχι νὰ ἀνακαλέσῃ τὴν ἀπόφασιν τὴν ὁποίαν ἐπῆρεν διὰ τοὺς σκοποὺς ὅπως αὕτη ἐρευνήσῃ, διὰ νὰ ἴδῃ κατὰ πόσον ὑπάρχουν ἀρκεταὶ πληροφορίαι διὰ νὰ τὴν ἀνακαλέσῃ κατόπιν. Αὐτὴ ἡ θέσις συνάδει μὲ τὰς ἀγγλικὰς αὐθεντίας. Ἐλέχθη ἐπίσης ἐνωρίτερον ὅτι ἐὰν ἀπεδέχοντο ὅτι οἱ αἰτηταὶ διέπραξαν πειθαρχικῆς φύσεως παρα-

1. Σ. Ε. 954 (1933). Βλ. καὶ ἄρθρον 31 τοῦ Ὑπαλλ. Κώδικος κατωτ. παράγραφος 42, VII.

πτώματα, τότε ὤφειλε νὰ τεθῇ εἰς ἐφαρμογὴν ἡ διαδικασία ἡ ὁποία προνοεῖται διὰ πειθαρχικὰ ἀδικήματα, διὰ νὰ δύνανται οἱ αἰτηταὶ νὰ ὑπερασπίσουν ἑαυτούς.

Τὸ ἐρώτημα παραμένει κατὰ πόσον ἡ διοίκησις ὀρθῶς ἐνήργησεν συμφώνως καὶ τῶν ἀρχῶν τοῦ φυσικοῦ δικαίου.

Εἰς τὴν ὑπόθεσιν Ridge ν. Baldwin and Others [1963] 2 Weekly Law Reports p. 935 ἐτέθη τὸ ἐρώτημα κατὰ πόσον ἡ ἀπόλυσις ἑνὸς ἀστυνόμου ἐγένετο ἐναντίον τῶν ἀρχῶν τῆς φυσικῆς δικαιοσύνης, ἤτοι χωρὶς νὰ δοθῇ εἰς αὐτὸν ἡ εὐκαιρία νὰ ἀπαντήσῃ τὴν κατηγορίαν ἐναντίον του. Ὁ Λόρδος Reid ἐκδίδων τὴν ἀπόφασιν τοῦ ἐδέχθη ὅτι κατεπατήθησαν αἱ ἀρχαὶ τοῦ φυσικοῦ δικαίου.

Ἦτο καὶ παραμένει ἡ θέσις τῶν αἰτητῶν ὅτι τὸ Ὑπουργεῖον παρέλειψε νὰ διεξαγάγῃ τὴν δέουσαν ἔρευναν ἐνωρίτερον, καὶ πρὸ τῆς ἀνακλήσεως τῆς προαγωγῆς τῶν αἰτητῶν διὰ τὴν περισυλλογὴν ὅλων τῶν γεγονότων ἀναφορικὰ πρὸς τὰς δύο ὑποθέσεις. Ἀγορεύων ὁ συνήγορος τῆς Δημοκρατίας κ. Ἀριστοδήμου ἐπὶ τοῦ θέματος τούτου, ὀρθῶς ὑπεστήριξε, κατὰ τὴν γνώμην μου, ὅτι ἐὰν τὸ Δικαστήριον πεισθῇ ὅτι δὲν ἐγένετο ἡ δέουσα ἔρευνα, ἀσφαλῶς ἡ διοίκησις ἐξήσκησε τὴν διακριτικὴν αὐτῆς ἐξουσίαν ἐπὶ ἐσφαλμένων νομικῶν κριτηρίων καὶ ἡ ἀπόφασις ἐλήφθη καθ' ὑπέρβασιν ἐξουσίας. Ἴδε *Ἄθως Γεωργιάδης ἐναντίον τῆς Δημοκρατίας* (1967) 3 C.L.R. 653 εἰς σ. 669, *Ἰωαννίδης Κωνσταντῖνος ἐναντίον τῆς Δημοκρατίας* (1972) 3 C.L.R. 318 εἰς σ. 326 καὶ *Μιχαὴλ Ζινιέρης ἐναντίον τῆς Δημοκρατίας* (1975) 3 C.L.R. 224. Περαιτέρω ἐτονίσθη ὑπὸ τοῦ συνηγόρου ὅτι ἡ ἀνάκλησις τῶν προαγωγῶν ἐγένετο ἄνευ χρονικοῦ προσδιορισμοῦ καὶ κατὰ συνέπειαν ἡ διοίκησις ἔσφαλεν, διότι ἡ διοικητικὴ πρᾶξις ἰσοδυναμεῖ μὲ ἀνάκλησιν τῶν προαγωγῶν. Πρὸς ὑποστήριξιν τῆς θέσεως ταύτης ἴδε Ἀποφάσεις τοῦ Συμβουλίου τῆς Ἐπικρατείας ὑπ' ἀρ. 3030/66, 801/69, 2879/69 καὶ 1716/70, αἱ ὁποῖαι ὑποστηρίζουν τὴν θέσιν καὶ τὴν νομικὴν ἄποψιν τοῦ συνηγόρου τῆς Πολιτείας.

Περαιτέρω, τόσον ὁ συνήγορος τῶν αἰτητῶν, ὅσον καὶ ὁ συνήγορος τῆς Δημοκρατίας, ὑπεστήριξαν ὅτι καὶ ἂν ἀκόμη ἡ διοίκησις εἶχεν εἰς χεῖρας της στοιχεῖα τὰ ὁποῖα θὰ ἐδικαιολόγουν πειθαρχικὴν δίωξιν ἐναντίον τῶν δύο αἰτητῶν—τὴν ὁποίαν εἶχεν ζητήσει ἀπὸ τὸν Ὑπουργὸν Ἐσωτερικῶν ὁ πρῶτος αἰτητὴς—τότε καὶ πάλιν ἡ διοίκησις παρέλειψεν, συμφώνως τῶν ἀρχῶν τῆς φυσικῆς δικαιοσύνης, νὰ θέσῃ ἐνώπιον τῶν αἰτητῶν τὰς πληροφορίας τὰς ὁποίας εἶχεν, διὰ νὰ δοθῇ εἰς αὐτοὺς ἡ εὐκαιρία νὰ ἀπαντήσουν

καὶ νὰ ἀντιμετωπίσουν καταλλήλως τὰς κατηγορίας ἐναντίον των. Ἴδε *Μεταφορικὴ Ἑταιρία Περιστερωνοπηγῆς ἐναντίον τῆς Δημοκρατίας* (1967) 3 C.L.R. 451, *Χατζηπετρῆς ἐναντίον τῆς Δημοκρατίας* (1968) 3 C.L.R. 702, καὶ *Ψάλτης ἐναντίον τῆς Δημοκρατίας* (1971) 3 C.L.R. 372 εἰς σ. 378, ὡς ἐπίσης καὶ τὰς ἀποφάσεις τῶν Ἀγγλικῶν Δικαστηρίων τὰς ὁποίας ἀνέφερα προηγουμένως.

Αἰσθάνομαι τὴν ἀνάγκην, προτοῦ καταλήξω εἰς τὰ νομικὰ συμπεράσματα, νὰ ἐκφράσω εὐχαριστίας πρὸς τὸν συνήγορον τῶν αἰτητῶν διὰ τὴν βοήθειαν τὴν ὁποίαν προσέφερε πρὸς τὸ Δικαστήριον καὶ διὰ τὴν σωρείαν τῶν νομικῶν ἀποφάσεων τὰς ὁποίας παρέθεσεν, αἱ ὁποῖαι γλαφυρότατα θέτουν καὶ ἀπαντοῦν τὰς ἀρχὰς δικαίου εἰς τὰς παρούσας προσφυγάς. Εἶμαι βέβαιος ὅτι ὁ κ. Κακογιάννης ὑπεστήριξεν μὲ ζῆλον καὶ ἄνευ φόβου καὶ προκαταλήψεως τοὺς δύο αἰτητάς, καὶ κατέβαλεν κάθε προσπάθειαν διὰ νὰ βοηθήσῃ τὸ Δικαστήριον διά νὰ ἀποδοθῇ πραγματικὴ δικαιοσύνη. Θὰ ἦτο ὅμως παράλειψις νὰ μὴν ἐκφράσω καὶ εὐχαριστίας πρὸς τὸν κ. Ἀριστοδήμου διὰ τὴν ὑποστήριξιν τῶν ἀρχῶν δικαίου καὶ διὰ τὴν στάσιν τὴν ὁποίαν ἐκράτησεν κατὰ τὴν διάρκειαν τῆς ἀγορεύσεως του διὰ τὴν πραγματικὴν ὑπονομὴν δικαιοσύνης ἡ ὁποία συνάδει μὲ τὸ λειτούργημα τῆς θέσεως τοῦ Γενικοῦ Εἰσαγγελέως, ἑνὸς ἀνεξαρτήτου λειτουργοῦ τῆς δικαιοσύνης.

Εἶμαι τῆς γνώμης ὅτι δὲν χωρεῖ καμμία ἀμφιβολία, ὅτι αἱ ἀρχαὶ αἱ ὁποῖαι διέπουν τὴν νομικὴν θέσιν ὅτι ἐφ' ὅσον αἱ διοικητικαὶ πράξεις ἔχουν δημιουργήσει δικαιώματα εἰς τὴν ἱεραρχίαν τῆς *δυνάμεως τῆς ἀστυνομίας καὶ ἐφ' ὅσον δέχομαι ὅτι αἱ προαγωγαὶ* ἀνήκουν εἰς τὴν σφαῖραν τοῦ δημοσίου δικαίου, δὲν δύνανται νὰ ἀκυρωθῶσι οὔτε νὰ ἀνακληθῶσι ἐπ' ἀόριστον, ὅπως συμβαίνει εἰς τὰς παρούσας αἰτήσεις, διότι ἡ ἐπ' ἀόριστον ἀνάκλησις ἰσοδυναμεῖ μὲ τὴν ἀκύρωσιν τῆς πράξεως ἢ καὶ ἀνάκλησιν αὐτῆς.

Ἐπαναλαμβάνω, αἱ διοικητικαὶ ἀρχαὶ ὀφείλουν νὰ μὴ ἀνακαλῶσι *τὰς νομίμους αὐτῶν πράξεις, ἐκ τῶν ὁποίων ἐδημιουργήθησαν* δικαιώματα εἰς τοὺς ὑπηρετοῦντας εἰς τὴν Κυπριακὴν Δημοκρατίαν. Εἶμαι βέβαιος ὅτι ἡ διοίκησις γνωρίζει ὅτι εἰς τὰς παρούσας κρισίμους στιγμὰς ποὺ ἀντιμετωπίζει ἡ Κυπριακὴ Δημοκρατία, ἡ νομιμότης τῶν διοικητικῶν πράξεων ἀποτελεῖ ἴδιον πολιτείας εὐνομουμένης καὶ πολιτείας δικαίου δι' ὅλους τοὺς πολίτας, καὶ δημιουργεῖ αἴσθημα ἀσφαλείας καὶ ἐμπιστοσύνης. Ὁσάκις ὅμως, ἡ ἐκδοθεῖσα πρᾶξις ἐγένετο νομίμως, ὅπως εἰς τὰς παρούσας αἰτήσεις εἶναι ὑποχρεωτικὴ διὰ τὴν δημοσίαν ἀρχήν, ἀφοῦ δεσμεύεται ἐκ τοῦ νόμου νὰ τὴν ἐκδώσῃ, καὶ ἀφοῦ αἱ προαγωγαὶ τῶν αἰτητῶν

ἔγιναν κατόπιν οὐσιαστικῆς κρίσεως τοῦ Ὑπουργοῦ Ἐσωτερικῶν. Περαιτέρω θὰ ἤθελα νὰ προσθέσω, ὅτι ἐφ' ὅσον ἐκ τῆς πράξεως τῶν προαγωγῶν ἔχουν ἀποκτηθῆ δικαιώματα *ἡ ἀρχὴ δὲν δύναται νὰ ἀνακαλέση τὰς προαγωγάς.*

Θὰ ἦτο ὅμως σκόπιμον νὰ προσθέσω ὅτι αἱ παράνομοι διοικητικαὶ πράξεις πρέπει νὰ ἀνακαλῶνται ἐκτὸς ἐὰν ἔχει μεσολαβήση πολὺ μακρὸς χρόνος ἀπὸ τῆς ἐκδόσεως τῶν πράξεων. Ἐν πάσῃ περιπτώσει υἱοθετῶ πλήρως τὰς ἀπόψεις τοῦ Καθηγητοῦ Παπαχατζῆ ὑπὸ τὸ φῶς τῶν συνθηκῶν τῆς παρούσης ὑποθέσεως.

Διὰ ὅλους τοὺς λόγους τοὺς ὁποίους ἀνέφερα, κατέληξα εἰς τὸ συμπέρασμα ὅτι ἡ ἀκύρωσις ἢ καὶ ἀνάκλησις τῶν προαγωγῶν εἰς τὸν βαθμὸν τοῦ Ἀνωτέρου Ἀστυνόμου καὶ Ἀστυνόμου Β' εἶναι ἀντίθετος τοῦ Συντάγματος, τοῦ νόμου, καὶ ἐγένετο καθ' ὑπέρβασιν ἢ κατάχρησιν τῆς ἐξουσίας τῆς ἐμπεπιστευμένης εἰς τὸ διοικητικὸν ὄργανον. Κατὰ συνέπειαν αἱ δύο προσφυγαὶ ἐπιτυγχάνουν καὶ κηρύσσω τὴν ἀπόφασιν ἢ τὴν πρᾶξιν ἐν ὅλῳ ἄκυρον καὶ ἐστερημένην οἱουδήποτε ἀποτελέσματος καὶ ὅτι πᾶν τὸ παραλειφθὲν ἔδει νὰ εἶχεν ἐκτελεσθεῖ. Ἐπειδὴ οἱ αἰτηταὶ δὲν ἐζήτησαν ἔξοδα, δὲν προτίθεμαι νὰ ἐκδώσω διάταγμα διὰ ἔξοδα.

Ἀκύρωσις ἐπιδίκων πράξεων.

This is an English translation of the judgment in Greek appearing at pp. 423–442 *ante*.

Recourse under Article 146 *of the Constitution—Act or decision in the sense of Article* 146.1*—Suspension of promotion of Police Officers —Is within the domain of public law and can be made the subject of a recourse.*

Administrative Law—Administrative acts—Lawful administrative acts —Revocation—General principles applicable—Promotions in the Police Force—Suspension pending an inquiry into certain information against the applicants—Promotions have created rights— They were binding and they could not be cancelled nor revoked indefinitely—Because the indefinite revocation is tantamount to the cancellation of the act—If the administration accepted that applicants committed offences of disciplinary nature then it ought to apply the procedure provided for disciplinary offences to enable the applicants to defend themselves in accordance, also, with the principles of natural justice.

Police Force—Promotions—Revocation—General principles.

By letter dated the 4th January, 1977, the Director-General of the Ministry of Interior informed the first applicant that the Minister of Interior decided to offer him promotion to the post of Chief Superintendent with effect from the 1st January, 1977; and by letter of the same date he informed the second applicant that the Minister of Interior decided to offer him promotion to the post of Superintendent B. Both applicants accepted the offer of promotion by letters to the Director-General Ministry of Interior. By letter dated 8th February, 1977 the Director-General Ministry of Interior informed the applicants that the Minister of Interior suspended their promotion pending the inquiry into information which has been received against them in the Ministry. Hence these recourses whereby the two applicants applied, *inter alia*, for a declaration of the Court that the suspension of their promotion is null and void and of no effect whatsoever and was made in excess or abuse of the powers vested in the organ or authority.

Counsel for the applicants mainly contended that:

(a) Once an offer of promotion was made to the applicants by the Minister of Interior, which was accepted by them in writing, the promotion became effective and binding and could not be cancelled or revoked by the Minister except for disciplinary offences in respect of which the applicants should have been charged under the Law. Therefore the Minister was not in law entitled to revoke the operation of the promotion.

(b) The administrative act of promotion is a contract and/or unilateral contract which the Minister had no right to cancel or revoke by unilateral action.

Held, (1) that the revocation by the Minister of Interior is a matter falling within the domain of public law; and that, accordingly, a recourse, under Article 146 of the Constitution, could be made against the revocation.

(2) That the Minister could only revoke the promotions before their acceptance by the applicants and the completion of the administrative act because only then the agreement between the administration and the applicants could have been revoked (see section 44(6) of the Public Service Law, 1967, section 13(1) of the Police Law, Cap. 285, *Panayides* v. *Republic* (1972) 3

C.L.R. 467 and *Tzavelas and Another* v. *Republic* (1975) 3 C.L.R. 490).

(3) That the administration should in principle have in its possession sufficient material against the applicants in order to revoke the administrative act and in order to be able to invoke the public interest; that the administration should have had such information as would have warranted a decision, and not to have revoked the decision taken by it for the purpose of making inquiries in order to find out whether there is sufficient information for its revocation subsequently; that this stand is consonant with the English Authorities; and that if the administration accepted that the applicants committed offences of a disciplinary nature, then the procedure laid down for disciplinary offences ought to have been put into effect to enable the applicants to defend themselves in accordance, also, with the rules of natural justice.

(4) That whenever an administrative act was made lawfully, as in the present cases, it is obligatory on the public authority, once it is bound by law to issue it and becauce the promotions of the applicants have been made after the Minister of Interior has taken into consideration the merits of each candidate.

(5) That the administrative authorities ought not to revoke their lawful acts which have created rights for those serving in the Republic; that since the administrative acts of promotion have created rights in the police hierarchy and since the promotions fall within the domain of public law, they cannot be cancelled nor be revoked indefinitely, because the indefinite revocation is tantamount to the cancellation and/or revocation of the act.

(6) That, therefore, this Court has come to the conclusion that the cancellation and/or revocation of the said promotions is contrary to the provisions of the Constitution, and the Law, and was made in excess or abuse of the power vested in the administrative organ; and that, accordingly, the two recourses succeed and the act or decision is declared null and void and of no effect and whatever has been omitted should have been performed.

Sub judice decisions annulled.

Cases referred to:

Pantelidou v. *Republic*, 4 R.S.C.C. 100 at pp. 104, 105;

Stamatiou v. *The Electricity Authority*, 3 R.S.C.C. 44 at p. 46;

Paschalides v. *Republic* (1969) 3 C.L.R. 297;
Panayides v. *Republic* (1972) 3 C.L.R. 467;
Tzavelas and Another v. *Republic* (1975) 3 C.L.R. 490;
Ridge v. *Baldwin and Others* [1963] 2 W.L.R. 935;
Georghiades v. *Republic* (1967) 3 C.L.R. 653 at p. 669;
Ioannides v. *Republic* (1972) 3 C.L.R. 318 at p. 326;
Zinieris v. *Republic* (1975) 3 C.L.R. 224;
Peristeronopighi Transport Co. v. *Republic* (1967) 3 C.L.R. 451;
HadjiPetris v. *Republic* (1968) 3 C.L.R. 702;
Psaltis v. *Republic* (1971) 3 C.L.R. 372 at p. 278;
Decisions of the Greek Council of State in Case Nos. 3030/66, 801/69, 2879/69 and 1716/70.

Recourses.

Recourses against the decision of the respondent to suspend the promotions of the applicants to the rank of Chief Superintendent and Superintendent B', respectively, in the Police Force.

G. Cacoyiannis, for the applicants.

V. Aristodemou, Counsel of the Republic, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. The Supreme Court has exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of the Constitution or of any law, or was made in excess or in abuse of powers vested in such organ or authority or person.

By these two cases which have been heard together both applicants Theocharis Ioannou and Demos Ioannou Zenios in their applications seek a declaration of the Court that:

(a) The suspension of their promotion to the rank of Chief Superintendent and Superintendent B', respectively, is nuil and void and of no effect whatsoever, and was made in excess or abuse of the power vested in the organ or the authority; and (b) a declaration that the omission of the respondent to publish in the official Gazette of the Republic the promotion of the

applicants and to take all necessary steps to give a full effect to the promotion, ought not have been made and whatever has been omitted should have been performed.

The facts of the case are as follows: On the 4th of January 1977, the Director-General of the Ministry of Interior sent a letter to the first applicant which reads as follows:

> " I have been directed to inform you that the Minister of Interior decided to offer you promotion to the post of Chief Superintendent in the Police Force as from 1st January, 1977. Your salary will be £2,674 per annum on the salary scale £2,518 x 98 – £2,812 and £2,714 from 1st June, 1977. Furthermore cost of living allowance is payable according to the rate approved by the Government from time to time.
>
> 2. Your new incremental date will be the 1st of June.
>
> 3. Please let me know as soon as possible whether you accept this offer."

On the 4th of January 1977, the first applicant, sent a letter to the Director-General of the Ministry of Interior through the Chief of Police which reads verbatim:

> " I refer to your letter No. P.(P) 30 of the 4.1.77 in relation to the offer of promotion made to me by the Honourable Minister of Interior to the post of Chief Superintendent as from 1.1.77 and I have the honour to inform you that I accept it. I also wish to warmly thank you for the honour made to me".

On the 8th February, 1977, the Director-General of the same Ministry sent a letter in which he expresses the new views of the Minister of Interior and says:

> " I have been instructed by the Minister of Interior to refer to the offer of promotion made to you under Ref. No. P.(P) 30 dated 4th January, 1977, to the post of Chief Superintendent and to inform you that the Minister of Interior has suspended your promotion until the examination of certain information against you which has been received by this Ministry".

As soon as this letter was received, the first applicant, rightly

in my opinion, sent a letter to the Minister of Interior expressing his anxiety and stating:

" Allow me to refer to you and request a meeting with his Beatitude the President of the Republic Archbishop Makarios in order to have the opportunity to prove the immaculate of my name and that of my family. As I had explained to you on many occasions in the recent past I was expecting that any whispers and rumours against me, would have been the cause of my being called by his Beatitude through you and the Chief of Police, to give my own explanation, or even interrogation, something which has not happened, and this inspite my expressed wish and effort through you, that if such matter existed, you would have been able to arrange a meeting with his Beatitude.

I felt confident, therefore, that unitl the offer of promotion on 4.1.77 no reason has arisen for the meeting requested for. Nevertheless, however, having in my mind the suspension of my promotion and the various publications which offend myself directly and indirectly, I have repeatedly protested to you, having also submitted a written complaint on 9.1.77 further to my telegram to you on 12.1.77.

I was expecting that in the meantime the officially announced examination of the information which was given to you through his Beatitude, would have been completed when the opportunity would have been given to me to (a) rebut the allegations against me, dishonest and slanderous in my opinion and (b) to be able to excercise my inalienable right in order to re-establish my honour and dignity by means of all legal process at my disposal.

Nevertheless until today—more than 30 days have already elapsed—I came to know of no process of investigation, nor have I been called to defend myself, something which according to me is unjust and contrary to any moral order and the rules of Administrative Law.

In view of the foregoing and inspite my desire not to find myself in litigation with the respectable Government I am obliged, on account of the events, to request through you the following, as a final appeal:

(1) Arrangement of a meeting with his Beatitude in order

to be given the opportunity to explain to Him any doubts he has in relation to my loyalty and place particulars before Him, which I humbly consider, does not have in mind, or, apparently, have not been placed before Him in so far as myself is concerned.

(2) Speedy completion of the process of investigation in relation to the matters put before you against me, and in any case before the end of this month, so as to have the opportunity to attack by recourse any unjust treatment of myself, within the time limit provided for by the Constitution. (I remind you also of my right to be called before any Investigating Committee according to the Constitution (Articles 29 & 30) and the Police Discipline Regulations).

I attach as Appendix to my present letter copy of my letter to the newspaper NEA dated 27.1.77 which contains a statement of mine regarding my views and beliefs for the information of His Beatitude.

Finally, I would like to say that for dignity reasons and professional prestige—reasons sacred to me—I shall be on leave (from that accumulated to my credit) until my honour and my professional dignity as well as my rights are restored".

The second applicant Demos Ioannou Zenios, who also serves in the ranks of the Police Force, received a letter from the Director-General of the Ministry of Interior on the 4th of January, 1977 by which he was informed that the Minister of Interior decided to offer him promotion to the post of Superintendent B' (see letter *exh.* 2). As was natural the second applicant accepted the promotion offered to him to the post of Superintendent B' by his letter addressed to the Director-General of the Ministry of Interior dated the 6th of January, 1977. On the 25th January, 1977, the second applicant, rightly so, sent another letter to the Minister of Interior emphasizing his anxiety, because as he writes:

" With great sorrow I observed that my name was not included in the list of the officers promoted which has been published in the ΕΔ/11/2 of the Police Force of Cyprus dated 10.1.77, inspite of the fact that according to your

letter reference P(P)191 dated 4.1.77 you informed me about your decision, and offered me promotion to the post of Superintendent B' which I accepted with thanks by letter dated 6.1.77. In that connection, I was informed through the press that my promotion has been suspended as a result of certain publications which appeared in the press and that new information, which has been transmitted to the Ministry against me is being examined.

In this connection I wish to protest to you for the unjust treatment to which I have been and I am still subjected to, and I submit my present protest simply in order to defend my honour, dignity and rights, and not because I intend to find myself in litigation, with Your Honour or the Chief of Police, persons whom I deeply respect and think highly of. For the time being I want to make only this statement Honourable Mr. Minister, that I have never been and I am not now a 'coupist' ".

On the 8th February, 1977, the Director-General of the Ministry of Interior in reply to the second applicant says:

" I have been directed by the Minister of Interior to refer to the offer of promotion made to you under Ref. No. P(P)191 of the 4th January, 1977 to the post of Superintendent B' and to inform you that the Minister of Interior has suspended your promotion until the examination of certain information against you which has been received by this Ministry".

The second applicant feeeling aggrieved, as it was expected, filed a recourse before the Supreme Court on the 21st April, 1977, and the contents of his application and the legal grounds are the same as those submitted by his brother, the first applicant, in his recourse No. 111/77. As it appears from the facts of the two recourses the first applicant joined the Police Force on the 1st February, 1944, and the second applicant on the 1st October, 1949; both were promoted after serving in the Force for a long time. On the 7th of May 1977, counsel for the Republic, Mr. Aristodemou, alleged that the decision to suspend the promotions of the two applicants has been taken by the Minister of Interior and Defence under the provisions of section 13 of the Police Law, Cap. 285, and under the legal principles gover-

ning the suspension and/or annulment of administrative acts on grounds of public interest and which was taken within reasonable time limits from the date of the offer of promotion. The facts that led the Minister of Interior and Defence to suspend the promotion of both the applicants are included in the opposition to the recourses which suggest that the Minister of Interior and Defence received substantive information and/or facts which are connected with matters of loyalty and devotion to the legality and order, and the lawful authorities of the state and during the coup d'Etat in July 1974. In paragraph 8 of the opposition counsel Mr. Aristodemou states that on the basis of the above information the Minister of Interior decided to suspend the promotions of the applicants and informed them by letter dated 8th February, 1977. As it was expected on the 30th May, 1977, counsel for both applicants, Mr. George Cacoyiannis, put in an application whereby he was asking to be supplied with particulars of the matters or the events referred to in paragraph 7 of the facts upon which the opposition was based and particularly the information and/or facts reflecting on the applicants for lack of faith and devotion to the law and legal order and the lawful Authorities of the State both before and during the coup d'etat of July 1974. On the 14th November 1977, counsel of the respondent put in the particulars of the matters and information referred to in paragraph 7 of the opposition which are as follows:

"1. On the 25.7.1974 he was posted as Divisional Police Commander Paphos on the strength of a circular of the 'Chief' of Police appointed by the coupists having been promoted to the rank of deputy Superintendent B', in substitution of the Divisional Police Commander of Paphos Mr. Galazi who resisted the coupists.

2. On 29.7.74, the applicant by a circular proceeded to radical transfers of loyal members of the Force having as a target the filling of vital posts by the coupists.

3. On 1.8.74 he submitted Forms P. 202, recommending for acting appointments members of the Force known for their active subversive action against the State, amongst whom 8 have been dismissed by the lawful Government on grounds of public interest. In recommending them, the applicant was writing (regarding some of them).

Reasons for recommendations:

He was dismissed from the Police Force for political reasons .... He is recommended for promotion to the rank of .....' as a special case and during his service in that Department. Appendixes 1-13 are hereby attached".

The grounds of law raised in both recourses were.

(1) Once an offer of promotion was made to the two applicants by the Minister of Interior to the post of Chief Superintendent and Superintendent B, which was accepted by applicants in writing, the promotion became effective and binding and could not be cancelled or revoked by the Minister of Interior except for disciplinary offences in respect of which the applicants should have been charged, tried and convicted in accordance with the provisions of the law. Therefore the Minister of Interior was not in law entitled to revoke the operation of the promotion.

(2) The administrative act of promotion is a contract and/or unilateral contract which the Minister of Interior had no right to cancel or revoke by unilateral action.

As I have already mentioned both applications are based on the same grounds of law. On the 14th of April 1978, Mr. Cacoyiannis submitted that the promotions of police officers are governed by the Police Law Cap. 285, as amended by various laws and especially by laws 19/60, 21/64 and 29/66. Section 13(1) as amended reads: "Officers shall be appointed, promoted and dismissed by the Minister of Interior".

There is no doubt that both applicants came within the provisions of section 13(1) of Cap. 285. It was further stressed that Regulations, governing promotions, have been made in accordance with s. 10 of the Law, as well as general Regulations which provide for disciplinary offences and conduct of the members of the Police Force. The Regulations for disciplinary offences are in force and if in fact disciplinary offences have been committed by both applicants, then the procedure laid down by the Law and the Regulations ought to have been followed by the administration.

Mr. Cacoyiannis in addressing the Court argued that the

suspension of the promotions effected by the Minister of Interior is a matter falling within the domain of public law. Because, there is no provision in the Police Law as to the relationship between the administration and the two applicants and what kind of an administrative act or contract was made by the offer of promotion by the Minister of Interior to the posts of Chief Superintendent and Superintendent B' and the acceptance of it by the applicants, I think it is useful to refer to the case of *Pantelidou* v. *Republic*, 4 R.S.C.C. 100, 104 and 105, where the Court held that the termination of the services of the applicant was a matter falling within the domain of public law and not of private law (see *John Stamatiou* v. *The Electricity Authority of Cyprus*, 3 R.S.C.C. 44 at p. 46) and therefore a recourse under Article 146 of the Constitution could be made before the Court against the termination of the services of the applicant. Also in the case of *Paschalides* v. *Republic* (1969) 3 C.L.R. 297 the Court in exercising its revisional jurisdiction held that the contractual appointment of the appellant to a post in the Elementary Education was a matter falling within the domain of public law and therefore the Court had jurisdiction to try the recourse in accordance with Article 146 of the Constitution. The fact that the appointment was made on contract could not alter its essential nature. Therefore I am of the view, relying on the aforementioned authorities as well, that such suspension is a matter falling within the realm of public law.

As it has been stated on police matters the Legislation follows by analogy the provisions of section 44(6) of the Public Service Law 33/67 which reads: "The promotions shall be published in the official Gazette of the Republic". It is also useful to add that s. 13(1) of Cap. 285, as amended, is of a general nature; with regard to promotions in the police force it only says that: "Policemen shall be appointed, promoted and dismissed by the Minister". I am, therefore, of the opinion that, when the Minister of Interior decided to offer promotion to both applicants, and before acceptance of the promotion by the two applicants for the completion of the administrative act, only then the agreement between the administration and the applicants could have been revoked. If any other authority is needed the case of *Panayides* v. *The Republic* (1972) 3 C.L.R. 467 in my opinion supports the above stand at p. 483, that even the omission to publish in the official Gazette is not an obstacle

to the promotion once the legal effect of the promotion begins as from the date of its offer and its acceptance, and therefore it cannot be freely revoked. See also *Tzavelas and another* v. *The Republic* (1975) 3 C.L.R. 490. In the case of *Tzavelas* the Court having taken into account regulation 11 of the Police (General) Regulations, 1958 on disciplinary matters, decided that once the Chief of Police did not order a proper inquiry to be carried out in order to ascertain the truth of the allegations against the applicant and to give him the opportunity to be heard and defend himself, it is a fundamental principle of administrative law that when an inquiry against a public officer has been carried out, but on advice no disciplinary or other measures have been taken against him, or when such measures have been taken but the officer was acquitted, such facts cannot be taken into account for promotion purposes.

Furthermore it was stated that the fact that disciplinary proceedings against a public officer are pending without any substantive criteria as regards the basis of the imputed accusations against him, they cannot also be taken into account for promotion purposes. It was further emphasized that once the accusations against the applicants insinuated that there was a breach of duty emanating from the aforementioned acts or omissions, and once no disciplinary proceedings against them have been instituted, the Chief of Police who decided on the promotion could not have taken into account that fact because it was irrelevant under the circumstances. It was further stated that when an administrative decision is based upon irrelevant facts, as in the present case, such decision should be considered as being null and void and of no legal effect whatsoever. See also on the question of suspension Supplement of the Case Law 1969–1970 at page 191 paragraph 441 which emphasizes that:

> "Stay of execution of an act without time limit is tantamount to revocation of the same, decisions of Council of State 1113/1970 No. B. 19, 104, 2879/1969 No. B. 18, 491".

Professor Kyriacopoulos in his textbook on Greek Administrative Law Part B' (General), 4th Edition, 1961, deals with the revocation of administrative acts and at page 403 he states:

> "The administrative act, as it is known, defines, like a judicial decision, what should prevail as law in the particular

case. But has the administrative act the same force as that possessed by the judicial decision? Has the administrative act the force of res judicata? The notion of res judicata known in the law of procedure lies in the nature of the judicial decision, that the presumption of truth emanating therefrom is irrebuttable and can no longer be disputed. There is no serious reason, in spite of the objections raised, why this notion whould not be applied on administrative acts as well. We, can, therefore, distinguish, in so far as they are concerned, between formal and substantive res judicata.

a. Formal res judicata is recognized in that act which cannot be attacked by any legal process on behalf of the interested person who can no longer oppose the execution of the act. On principle an act of the administration can be attacked by the interested person within a set time limit either before the higher administrative authority, or before an administrative Court. After the lapse of the specified time limit a recourse cannot be made. Thereafter the act is binding on the citizen, so long as the authority issuing it or the authority hierarchically superior to it does not revoke or cancel it. The fact that such act cannot be attacked and is executory, is expressed by the maxim res judicata jus facit inter partes.

b. But has the administrative act also the force of substantive res judicata? The substantive res judicata of the judicial decision is an intentional creation of the law of procedure and it presupposes the formal one. The notion of the formal res judicata lies in this; the contents of the decision binds not only the citizen but also the Court, and this is expressed in the maxim res judicata jus facit inter omnes. Such restriction can be explained in two ways; either as a prohibition to the Courts for their own prestige—ne varia judicetur—to deal twice with the examination of a case on which they have already adjudicated (absolute res judicata); or as a consequence of the right of the litigant to preserve the beneficial for him decision (relative res judicata). Has then the administrative act the force of substantive res judicata in the sense that it binds both the citizen and the administrative authority? And conse-

quently no revocation or amendment of the act in force can be effected?

The matter should be dealt with firstly on the basis of the existing legislation and then theoretically. Because the principles governing the revocation of an act which have been formulated by theory and case-law can only be put into effect, if and to the extent that there is no provision expressly permitting or prohibiting the administration from revoking its own act[1]".

There is no doubt that the administrative authorities generally cannot revoke their lawful acts from which there emanated vested rights of civil servants or members of the police force. Furthermore it is equally right to emphasize that an act of the administration cannot be revoked indefinitely if this amounts to the annulment of the act.

The grounds of public interest invoked by the Minister of the Interior cannot stand, once the promotions were lawful according, also, to certain authorities cited by counsel. It is also unthinkable to say that the administration could revert after the promotions, because new information has been received and to justify itself by saying: "Our decision to promote you to the post which you are holding today was wrong and we take this stand because it is in the public interest that you should not have been in the post that you are holding".

It is also indicative that the acts of retrospective revocation of lawful administrative acts show that they are only acts which continue from day to day and in my opinion then the administration can interfere. Particularly with regard to promotions it is implied and the authorities support this principle, that the holder of the post will continue to hold it until he is promoted again or leaves the service or is dismissed from the service or for other reasons. On this subject see Supplement of Case Law 1969-1971, paragraph 421 at p. 190. And for misconception of fact see paragraphs 433, 434, 435, 437, 498 and 39. See also manual of Administrative Law, 1977 edition at p. 168, paragraph 174, under the heading "Repeal and revocation of the administrative act". See also page 170, para. 176.

(1) Cf. Council of State 661/1940, 57, 281/1944, 1189/1949, 124, 1529/1952. Cf. also Council of State 543/1939.

Professor Papahatzis in his textbook "Studies on the Law of Administrative Disputes" 4th Ed. 1961, emphasizes at p. 406 paragraph D that:

> " Administrative authorities generally are not allowed to revoke their lawful acts wherefrom there emanated vested rights of private individuals. The revocability of administrative acts is the general rule. But whenever the lawfully issued act is obligatory on the public authority (i.e. it was bound by law to issue it) or whenever the law describes it as 'irrevocable' or whenever the act has for certain private individuals or group of persons a 'recommendatory' character (as for instance the acts of appointment, or approvals given after a substantive consideration etc.) and generally whenever rights have been acquired by the citizens from the act, the authority issuing the act cannot revoke it—nor afortiori can any other public authority. On the contrary unlawful administrative acts should be revoked, unless a long time has elapsed since they were issued. But such lapse of long time does not impede the revocation of an illegal act if reasons of public order or public interest (not related in any case with the narrowly concealed financial interest of the public administration) made such revocation imperative or if the issuing of the act has been caused by a deceitful act of the private individuals concerned e.g. by knowingly placing inaccurate facts to the relevant public authority".

Professor Stassinopoulos in his "Lessons on Administrative Law" 1957, in dealing with the subject "The Revocation of Administrative Acts" emphasized at p. 256 that:

> " The abstention by the citizen for a long time from using the act, interpreted as a tacit abandonment of the right given by the act and therefore as consent to the revocation constitutes in certain circumstances a ground supporting the revocation of the act. But before the issue of the act of revocation by which the administration expresses its wish that the act shall cease to have any effct, this act remains in force. Thus the omission by the person appointed in a public post to assume service constitutes a tacit but clear consent to the revocation of the appointment, but it is not in itself sufficient to invalidate the act of appointment[1].

(1) Council of State (1933). See, also, section 31 of the Civil Service Code para. 42, VII.

There is an exception in the case where the act contains in itself a resolutive condition setting a time limit, within which it should come into effect. In this case the running out of this time limit without the act having been put into effect automatically sets the act not put into effect at naught".

It was further stated that the administration should in principle have in its possession sufficient material against the applicants in order to revoke the administrative act and in order to be able to invoke the public interest. I have no doubt in this connection that the administration should have had such information as would have warranted a decision, and not to have revoked the decision taken by it for the purpose of making inquiries, in order to find out whether there is sufficient information for its revocation subsequently. This stand in consonant with the English authorities. It was, also, said earlier that if they accepted that the applicants committed offences of a disciplinary nature, then the procedure laid down for disciplinary offences ought to have been put into effect, so that the applicants would have been able to defend themselves.

The question remains whether the administration acted properly in accordance, also, with the principles of natural justice.

In the case of *Ridge v. Baldwin and Others* [1963] 2 W.L.R. 935, the question arose whether the dismissal of a police constable was made contrary to the principles of natural justice i.e. without giving him the opportunity of answering the charges preferred against him. Lord Reid in delivering his judgment held that the rules of natural justice have been violated.

The position of the applicants was, and still is, that the Ministry failed to carry out a due inquiry earlier and before the revocation of the promotion of the applicants with a view of collecting all the material in relation to the two cases. Counsel for the Republic Mr. Aristodemou in addressing the Court on this issue, rightly in my opinion argued that if the Court was persuaded that no due inquiry has been carried out then admittedly the administration has exercised its discretionary powers upon wrong legal criteria and the decision has been taken in excess of power. See *Athos Georghiades* v. *The Republic* (1967)

3 C.L.R. 653 at p. 669, *Ioannides Constantinos* v. *The Republic* (1972) 3 C.L.R. 318 at p. 326 and *Michael Zenieris* v. *The Republic* (1975) 3 C.L.R. 224. It was further emphasized by counsel that the revocation of the promotions was made without setting any time limit and consequently the administration was wrong, because the administrative act is equivalent to the revocation of the promotions. In support of this view see Decisions of the Council of State Nos. 3030/66, 801/69, 2879/69, 1716/70, which support the stand and the legal view of counsel for the Republic.

Furthermore both counsel of the applicants and counsel of the Republic argued that, even if the administration possessed material warranting disciplinary proceedings against the two applicants—which the first applicant had requested from the Minister of the Interior—then again the administration has failed according to the principles of natural justice, to put before the applicants the information which it had in order to give them the opportunity of answering and duly face the charges against them. See *Peristeronopighi Transport Co. Ltd.* v. *The Republic* (1967) 3 C.L.R. p. 451, *HadjiPetris* v. *The Republic* (1968) 3 C.L.R. 702, *Psaltis* v. *Republic* (1971) 3 C.L.R. 372 at p. 378 as well as dec sions of the English Courts which I have mentioned earlier.

Before I come to my legal conclusions I feel it is necessary to thank counsel for the applicants for the assistance he has rendered to the Court and for the mass of the legal authorities he cited, which clearly present and expound the principles of law in the present recourses. I am positive that Mr. Cacoyiannis supported with zeal and without fear or bias both applicants and has made every effort to assist the Court to do real justice. It would have been an omission, however, not to express thanks to Mr. Aristodemou, also, for supporting the principles of justice and for the attit ide he maintained during his address for the real administratio *of justice which is consonant with the office* of the Attorney-General an independent officer of justice.

I am of the opinio that there is no doubt that the principles governing the legal position that once the administrative acts have created rights in the hierarchy of the Police Force and once I accept that promotions are within the realm of public law they cannot be cancelled nor revoked indefinitely, as was done in the

present recourses, because the indefinite revocation is tant-amount to the cancellation of the act and/or its revocation.

I repeat that the administrative authorities, should not revoke their lawful acts by which rights have been created in favour of persons serving in the Republic of Cyprus. I am positive that the administration is aware that, during the present critical times the Republic of Cyprus is facing, the legality of administrative acts is consistent with a state which supports the rule of law and a state which does justice to all its citizens and creates a feeling of security and confidence. But whenever the act issued was issued lawfully, as in the present applications, it is obligatory on the public authority, once it is bound by the law to issue it, and because the promotions of the applicants have been made after the Minister of Interior has taken into consideration the merits of each candidate. I would further like to add that once rights have emanated by the act of promotions the *authority cannot revoke the promotions.*

It is useful to add that illegal administrative acts should be revoked unless a long time has elapsed from their issue. In any case I fully adopt the views of Professor Papahatzis in the light of the circumstances of the present case.

For all the aforementioned reasons I came to the conclusion that the cancellation or revocation of the promotions to the rank of Chief Superintendent and Superintendent B' is contrary to the provisions of the Constitution and the law, and was made in excess or abuse of the power vested in the administrative organ. Therefore both recourses succeed, and I declare the decision or the act void as a whole and of no legal effect whatsoever and that whatever has been omitted should have been performed. Because applicants did not ask for costs, I do no intend to make an order as to costs.

Sub judice decisions annulled. No order as to costs.