8η 'Απριλίου, 1982

[ΧΑΤΖΗΑΝΑΣΤΑΣΙΟΥ, Δ.]

ΕΠΙ ΤΟΙΣ ΑΦΟΡΩΣΙ ΤΟ ΑΡΘΡΟΝ 146 ΤΟΥ ΣΥΝΤΑΓΜΑΤΟΣ

ΚΩΝΣΤΑΝΤΙΝΟΣ Γ. ΜΙΘΥΛΛΟΣ,

Αἰτητὴς,

κατὰ

ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ ΤΗΣ ΚΥΠΡΟΥ ΜΕΣΩ ΤΟΥ ΥΠΟΥΡΓΕΙΟΥ ΕΣΩΤΕΡΙΚΩΝ ΚΑΙ/Η ΤΟΥ ΑΡΧΗΓΟΥ ΤΗΣ ΑΣΤΥΝΟΜΙΑΣ,

Καθ' ὧν ἡ Αἴτησις.

(*Ὑπόθεσις ὑπ' ἀρ.* 174/76).

Δημόσιοι Ὑπάλληλοι—Πειθαρχικὰ Ἀδικήματα—Κατὰ πόσον ἀθωωθέντος ὑπὸ Ποινικοῦ Δικαστηρίου τοῦ κατηγορηθέντος δημοσίου ὑπαλλήλου κωλύεται τὸ Πειθαρχικὸν Δικαστήριον νὰ τιμωρήσῃ πειθαρχικῶς τὸν ὑπάλληλον εἰς τὰς αὐτὰς κατηγορίας.

Ἀρχὴ τῆς βεβαιότητος τοῦ δικαίου καὶ τῆς δικαιοσύνης—Ἀπαραίτητον χαρακτηριστικὸν Κράτους δικαίου.

Ὁ αἰτητὴς, ὁ ὁποῖος ἦτο μέλος τῆς Ἀστυνομικῆς Δυνάμεως Κύπρου, εὑρέθη ἔνοχος ὑπὸ Ποινικοῦ Δικαστηρίου διὰ διάπραξιν διαφόρων ἀδικημάτων κατὰ τὴν ἐκτέλεσιν τῶν καθηκόντων του. Ὁ αἰτητὴς ἐφεσίβαλε τὴν καταδικαστικὴν ἀπόφασιν τοῦ Ποινικοῦ Δικαστηρίου εἰς τὸ Ἀνώτατον Δικαστήριον τὸ ὁποῖον ἔκρινεν ὅτι τὸ Ποινικὸν Δικαστήριον δὲν ἠδύνατο κατ' ἀσφαλῆ τρόπον νὰ βασισθῇ ἐπὶ τοῦ ἀποδεικτικοῦ ὑλικοῦ ἐπὶ τοῦ ὁποίου ἐβασίσθη διὰ νὰ θεμελιώσῃ τὴν καταδικαστικὴν ἐτυμηγορίαν του, ἐπειδὴ μεταξὺ ἄλλων, οἱ μάρτυρες κατηγορίας ἔτυχαν κακῆς μεταχειρίσεως ὑπὸ ἀστυνομικῶν ὀργάνων προτοῦ προβοῦν εἰς καταθέσεις ἐνοχοποιητικὰς διὰ τοὺς κατηγορουμένους· καὶ κατέληξεν εἰς τὸ συμπέρασμα ὅτι θὰ ἦτο πρὸς τὸ συμφέρον τῆς ὀρθῆς ἀπονομῆς τῆς δικαιοσύνης ἐὰν ἀκυρωνόταν ἡ καταδικαστικὴ ἀπόφασις.

Μετὰ τὴν ἀπόφασιν τοῦ Ἀνωτάτου Δικαστηρίου ὁ αἰτητὴς

Editor's note: An English translation of this judgment appears at pp. 712–725 *post*.

εύρέθη ένοχος ὑπὸ Πειθαρχικοῦ Δικαστηρίου διὰ διάπραξιν τῶν ἀδικημάτων τῆς ἀμέλειας καθήκοντος καὶ ἀναρμόστου συμπεριφορᾶς, τὰ δὲ γεγονότα τῆς ποινικῆς ὑποθέσεως ἦσαν τὰ αὐτὰ ὡς καὶ εἰς τὴν πειθαρχικὴν ὑπόθεσιν.

Κατόπιν προσφυγῆς τοῦ αἰτητοῦ κατὰ τῆς ἀποφάσεως τοῦ Πειθαρχικοῦ Δικαστηρίου:

ΤΟ ΔΙΚΑΣΤΗΡΙΟΝ ΕΚΡΙΝΕΝ ΟΤΙ:

"Οσον ἀφορᾶ τὴν ἐπίδρασιν ἣν ἀσκεῖ ἐπὶ τῆς πειθαρχικῆς *δίκης τὸ δεδικασμένον ἐκ ποινικῶν ἀποφάσεων αἱ ἀκόλουθοι* ἀρχαὶ προκύπτουν ἐκ τῆς νομολογίας:

"Οτι ὁ Ποινικὸς Δικαστὴς περιβάλλεται ὑπὸ πλειόνων ἐγγυήσεων ἢ ὁ πειθαρχικός· (2) 'Εφ' ὅσον ὁ Ποινικὸς Δικαστὴς δεχθῆ τὴν ὕπαρξιν ἢ ἀνυπαρξίαν ὡρισμένων πραγματικῶν περιστατικῶν, ὁ Πειθαρχικὸς Δικαστὴς ὀφείλει νὰ δεχθῆ τὴν τοιαύτην κρίσιν ὅσον ἀφορᾶ τὸ ἀντικειμενικῶς ὑπόστατον τῶν περιστατικῶν τούτων· (3) Καίτοι ὁ Πειθαρχικὸς Δικαστὴς ὀφείλει νὰ δεχθῆ τὴν κρίσιν τοῦ Ποινικοῦ Δικαστοῦ ὅσον ἀφορᾶ τὸ ἀντικειμενικῶς ὑπόστατον ὡρισμένων πραγματικῶν περιστατικῶν δὲν δεσμεύεται ὅπως ὑπαγάγῃ ἢ μὴ ὑπαγάγῃ τὰ αὐτὰ περιστατικὰ εἰς τὴν ἔννοιαν τοῦ πειθαρχικοῦ ἀδικήματος· (4) Οὐχὶ ἁπλῶς ἡ ἀπαλλαγὴ ἀλλὰ καὶ ἡ ἀθώωσις ὑπὸ τοῦ Ποινικοῦ Δικαστοῦ δὲν ἀποκλείει τὴν πειθαρχικὴν δίωξιν διὰ τὸ ἐπὶ τοῦ αὐτοῦ πραγματικοῦ περιστατικοῦ στηριζόμενον ἀδίκημα· (5) 'Ο Πειθαρχικὸς Δικαστὴς δίναται νὰ ἐκτιμήσῃ κατ' ἰδίαν κρίσιν τὰς προσκομισθείσας ἀποδείξεις· (6) 'Αθώωσις λόγῳ ἀμφιβολιῶν δὲν ἀποτελεῖ δεδικασμένον καὶ δὲν θεωρεῖται νομικὸν κώλυμα διὰ τὴν ἐπιβολὴν ποινῆς.

'Εφ' ὅσον δὲ εἰς τὴν προκειμένην περίπτωσιν δὲν τίθεται θέμα ἐκτιμήσεως τῶν προσκομισθεισῶν ἀποδείξεων ὡς ἡ ἀρχὴ (5)· καὶ ἐφ' ὅσον ἡ πειθαρχικὴ καταδίκη ἐθεμελιώθη ἐπὶ τοῦ αὐτοῦ ἀποδεικτικοῦ ὑλικοῦ ὡς ἡ ποινικὴ τοιαύτη· καὶ ἐφ' ὅσον τὸ 'Ανώτατον Δικαστήριον, τὸ ὁποῖον οὐχὶ μόνον περιβάλλεται ὑπὸ πλειόνων ἐγγυήσεων ἢ τὸ Πειθαρχικὸν Δικαστήριον, ἀλλὰ καὶ τὸ ὁποῖον δυνάμει τοῦ Συντάγματος κέκτηται ἀποκλειστικὴν δικαιοδοσίαν νὰ κρίνῃ καὶ νὰ ἀποφασίζῃ τελεσιδίκως ἐπὶ πάσης ποινικῆς ἐφέσεως οἱουδήποτε Ποινικοῦ Δικαστηρίου, ἔκρινεν ὡς ἀνωτέρω ἀνεφέρθη, δύναται

κατὰ τὴν γνώμην τοῦ Δικαστηρίου τούτου νὰ ἐξαχθῆ τὸ ἀσφαλὲς συμπέρασμα ὅτι ἡ κρίσις αὕτη τοῦ 'Ανωτάτου Δικαστηρίου ἰσοδυναμεῖ μὲ τὴν ἀνυπαρξίαν τῶν πραγματικῶν περιστατικῶν ἐπὶ τῶν ὁποίων ἐθεμελιώθη καταδικαστικὴ ἐτυμηγορία τοῦ Ποινικοῦ Δικαστηρίου, καὶ οὕτω ὁ Πειθαρχικὸς Δικαστὴς ὤφειλε, συμφώνως τῆς ἀρχῆς (2) ἀνωτέρω, νὰ δεχθῆ τὴν τοιαύτην κρίσιν τοῦ 'Ανωτάτου Δικαστηρίου. 'Επομένως ἡ ἐπίδικος ἀπόφασις τοῦ Πειθαρχικοῦ Δικαστηρίου κρίνεται ὡς οὖσα ἀντίθετος πρὸς τὸν νόμον ἐντὸς τῆς ἐννοίας τοῦ ἄρθρου 146.1 τοῦ Συντάγματος καὶ ὡς γενομένη καθ' ὑπέρβασιν καὶ κατάχρησιν ἐξουσίας, καὶ ὡς ἐκ τούτου ἀκυροῦται.

(2) 'Αλλὰ ὑπάρχει καὶ ἕτερος λόγος διὰ τὸν ὁποῖον ἡ ἐπίδικος ἀπόφασις δέον ὅπως ἀκυρωθῆ. Διὰ τὴν διατήρησιν κράτους δικαίου ὁ συνταγματικὸς νομοθέτης ὥρισε τὸ 'Ανώτατον Δικαστήριον ὡς θεματοφύλακα τῶν θεμελιωδῶν δικαιωμάτων καὶ ἐλευθεριῶν τοῦ ἀτόμου. Καὶ εἶναι ὡς ἐκ τούτου τὸ 'Ανώτατον Δικαστήριον οὐχὶ ἁπλῶς ἓν Ποινικὸν Δικαστήριον ἀλλὰ ὁ πλέον πειστικός, αὐθεντικός, ἔγκυρος καὶ ταὐτοχρόνως τελεσίδικος Δικαστὴς (Arbiter) ἁπάσης καταστάσεως ἀφορώσης εἰς τὰ ὡς ἄνω δικαιώματα· καὶ ἐφ' ὅσον ἐπὶ τοῦ ἀποδεικτικοῦ ὑλικοῦ ἐπὶ τῇ βάσει τοῦ ὁποίου ὁ πολίτης ἐστερήθη τῆς ἐλευθερίας αὐτοῦ, ἡ ὁποία διασφαλίζεται ὑπὸ τοῦ ἄρθρου 11 τοῦ Συντάγματος, τὸ 'Ανώτατον Δικαστήριον ἀπεφάνθη ὡς ἀνωτέρω, τὸ Δικαστήριον τοῦτο ἔχει τὴν γνώμην ὅτι, βάσει τῆς ἀρχῆς τῆς βεβαιότητος τοῦ δικαίου καὶ τῆς δικαιοσύνης (principle of certainty of the Law and Justice) ἡ ὁποία εἶναι ἀπαραίτητον χαρακτηριστικὸν κράτους δικαίου (essential feature of the rule of Law) (ἴδε ἀπόφασιν εἰς τὴν ὑπόθεσιν *Παυλίδη ἐναντίον Τῆς Δημοκρατίας* (1967) 3 Α.Α.Δ. 217 εἰς σελίδα 230), ὁ πολίτης ἐδικαιοῦτο νὰ ἀναμένη ἀπὸ τὸ πειθαρχικὸν ὄργανον σεβασμὸν πρὸς τὴν ἐν προκειμένῳ ἐτυμηγορίαν τοῦ 'Ανωτάτου Δικαστηρίου τῆς Πολιτείας.

Προσβαλλομένη ἀπόφασις ἠκυρώθη.

'Υποθέσεις παρατεθεῖσαι:

'Εφταψούμης καὶ ἄλλοι ἐναντίον Τῆς 'Αστυνομίας (1975) 2 Α.Α.Δ. 149·

Παυλίδης ἐναντίον τῆς Δημοκρατίας (1967) 3 Α.Α.Δ. 217 εἰς σελ. 230.

Προσφυγή.

Προσφυγὴ κατὰ τῆς ἀποφάσεως τῶν καθ' ὧν ἡ αἴτησις ὅπως ἐπικυρώσωσι τὴν εἰς ἐξαναγκασμὸν παραίτησιν τοῦ αἰτητοῦ ἐκ τῆς Ἀστυνομικῆς Δυνάμεως Κύπρου.

Ε. Εὐσταθίου, διὰ τὸν αἰτητήν.

Γλ. Χατζηπέτρου, διὰ τοὺς καθ' ὧν ἡ αἴτησις.

ΧΑΤΖΗΑΝΑΣΤΑΣΙΟΥ Δ.: Ὁ αἰτητὴς Κωνσταντῖνος Γ. Μίθυλλος ἦτο μέλος τῆς Ἀστυνομικῆς Δυνάμεως Κύπρου ἀπὸ δεκαεξαετίας καὶ πλέον. Τὴν 26 Φεβρουαρίου, 1975, κατεχωρήθη ἐναντίον τοῦ αἰτητοῦ ἡ πειθαρχικὴ ὑπόθεσις 4/75 διὰ τῆς ὁποίας οὗτος ἐκατηγορεῖτο διὰ ἀμέλειαν καθήκοντος καὶ ἀνάρμοστον συμπεριφοράν. Ἡ ἀνωτέρω ὑπόθεσις ἐξεδικάσθη τὴν 30 Μαρτίου, 1975, καὶ ἐπεβλήθη εἰς τὸν κατηγορούμενον ἡ συνολικὴ ποινὴ προστίμου ἐκ £15 διὰ τὰς ἀνωτέρω κατηγορίας. Τὴν 7 Ἀπριλίου, 1975, ὁ Ἀστυνομικὸς Διευθυντὴς ἐπαρχίας Λάρνακος ἀφοῦ ἀνεθεώρησε τὴν ἀνωτέρω ὑπόθεσιν ἐπέβαλεν εἰς τὸν αἰτητὴν ποινὴν ὑποχρεωτικῆς ἀφυπηρετήσεως καὶ/ἢ ἐξαναγκασμὸν πρὸς παραίτησιν. Ἐκ παραλλήλου πρὸς τὴν ἀνωτέρω πειθαρχικὴν διαδικασίαν τὴν 28 Μαρτίου, 1975, ἤρξατο ποινικὴ δίωξις ἐναντίον τοῦ αἰτητοῦ ἐνώπιον τοῦ Ἐπαρχιακοῦ Δικαστηρίου Λάρνακος εἰς τὴν ὑπ' ἀρ. 1111/75 ποινικὴν ὑπόθεσιν, τῆς ὁποίας τὰ γεγονότα ἦσαν ταυτόσημα μὲ τὴν ἀνωτέρω πειθαρχικὴν ὑπόθεσιν. Ὁ αἰτητὴς ἀντιμετώπιζε 14 συνολικῶς κατηγορίας, ἡ ὑπόθεσις δὲ ἐξεδικάσθη ἀπὸ τὶς 28 Μαρτίου, 1975, μέχρι τὶς 27 Ἰουνίου, 1975, ἐπεβλήθη δὲ εἰς τὸν αἰτητὴν ποινὴ φυλακίσεως ὀκτὼ μηνῶν εὑρεθέντος ἐνόχου εἰς δύο κατηγορίας, ἀθωωθεὶς καὶ ἀπαλλαγεὶς εἰς τὰς ὑπολοίπους κατηγορίας. Δὲν χωρεῖ καμμίαν ἀμφιβολίαν ὅτι τὰ γεγονότα τῆς ποινικῆς ταύτης ὑποθέσεως ἦσαν τὰ αὐτὰ ὡς καὶ εἰς τὴν πειθαρχικὴν ὑπόθεσιν ἐναντίον του.

Τὴν 28 Ἰουνίου, 1975, ὁ αἰτητὴς ἐφεσίβαλε τὴν ἀπόφασιν τοῦ Ἐπαρχιακοῦ Δικαστηρίου Λάρνακος εἰς τὴν ὑπ' ἀρ. 3636 Ποινικὴν Ἔφεσιν. Τὸ Ἀνώτατον Δικαστήριον ἐξεδίκασε τὴν ἀνωτέρω ἔφεσιν (εἰς ὑπόθεσιν Ἐφταψούμη καὶ Ἄλλου ἐναντίον Τῆς Ἀστυνομίας (1975) 2 Α.Α.Δ. 149), ἀθώωσε τὸν αἰτητὴν εἰς τὰς τρεῖς κατηγορίας καὶ διέταξε ἐπανεκδίκασιν τῶν ἄλλων κατηγοριῶν ὅτε καὶ ἠθωώθη ὑπὸ τοῦ Ἐπαρχιακοῦ Δικαστηρίου Λάρνακος. Τὴν 14 Ἀπριλίου, 1975, ὁ αἰτητὴς ἐφεσίβαλε τὴν ἀπόφασιν τοῦ Πειθαρχικοῦ Δικαστηρίου τῆς Ἀστυνομίας ἡ δὲ ἔφεσις ἀνεβάλλετο μέχρι τῆς ἀποπερατώσεως τῆς ἐκδικάσεως

τῆς Ποινικῆς Ἐφέσεως ὑπὸ τοῦ Ἀνωτάτου Δικαστηρίου. Τὴν 29 Ἀπριλίου, 1976, ἐξεδικάσθη ἡ πειθαρχικὴ ἔφεσις καὶ ἐπεκυρώθη ἡ καταδίκη τοῦ αἰτητοῦ εἰς ἐξαναγκασμὸν εἰς παραίτησιν.

Τὴν 13 Ἰουλίου, 1976, ὁ αἰτητὴς κατεχώρησε τὴν παροῦσαν προσφυγὴν καὶ ἐξαιτεῖτο τὴν ἀκόλουθον θεραπείαν: (α) Δήλωσιν τοῦ Σεβαστοῦ Δικαστηρίου ὅτι ἡ ἀπόφασις τῶν καθ' ὧν ἡ αἴτησις ὅπως ἐπικυρώσωσι τὴν εἰς ἐξαναγκασμὸν καὶ παραίτησιν τοῦ αἰτητοῦ ἐκ τῆς Ἀστυνομικῆς Δυνάμεως Κύπρου γενομένη τὴν 29 Ἀπριλίου, 1976, καὶ/ἢ ἀπόφασις τῶν καθ' ὧν ἡ αἴτησις ὅπως ἐξαναγκάσωσι καὶ παραιτήσωσι τὸν αἰτητὴν ὑπὸ ἡμερομηνίαν 7 Ἀπριλίου, 1975, καὶ/ἢ ἀπόφασις ὅπως ὁ αἰτητὴς ἐξαναγκασθῇ εἰς παραίτησιν εἶναι ἄκυρος καὶ/ἢ παράνομος καὶ/ἢ ἐστερημένη οἱουδήποτε νομικοῦ ἀποτελέσματος καὶ/ἢ ὅτι ἡ ἀπόφασις αὕτη θὰ ἔδει ὅπως μὴ ἐλαμβάνετο· (β) Ἔξοδα.

Ἡ παροῦσα προσφυγὴ βασίζεται ἐπὶ τῶν ἀκολούθων νομικῶν σημείων: (α) Ἡ ἀπόφασις τῶν καθ' ὧν ἡ αἴτησις εἶναι παράνομος καὶ ἐλήφθη κατὰ κατάχρησιν καὶ/ἢ καθ' ὑπέρβασιν ἐξουσίας. (β) Οἱ καθ' ὧν ἡ αἴτησις *ἐνήργησαν τελοῦντες ἐν πλάνῃ περὶ* τὰ πράγματα καὶ/ἢ ἐστηρίχθησαν ἐπὶ πεπλανημένης βάσεως. (γ) Οἱ καθ' ὧν ἡ αἴτησις ἐνήργησαν τελοῦντες ἐν νομικῇ καὶ/ἢ πραγματικῇ πλάνῃ. (δ) Οἱ καθ' ὧν ἡ αἴτησις παρηρμήνευσαν καὶ/ἢ ἐσφαλμένως ἐφήρμοσαν τὰς ἀρχὰς τοῦ δικαίου ἐπὶ ἀναθεωρήσεως ἀποφάσεως καὶ/ἢ κατ' ἔφεσιν καὶ/ἢ ἐξέτασιν κατ' ἐκδίκασιν πειθαρχικῶν ὑποθέσεων. (ε) Οἱ καθ' ὧν ἡ αἴτησις παρεβίασαν τὰς παραδεδειγμένας ἀρχὰς Φυσικῆς Δικαιοσύνης. (στ) Οἱ καθ' ὧν ἡ αἴτησις παρέβησαν τοὺς Ἀστυνομικοὺς κανονισμούς. (ζ) Ἡ ἀπόφασις ἐξεδόθη κατ' ἀντίθεσιν τῶν Ἀρχῶν τοῦ Δεδικασμένου κατ' ἀντίθεσιν πρὸς τὴν ἀπόφασιν τοῦ Ἀνωτέρου Δικαστηρίου εἰς τὴν ἀπόφασιν (1975) 2 Ἀποφάσεις Ἀνωτάτου Δικαστηρίου σελὶς 149 (η) Ἡ ἀπόφασις ἦτο ἀντίθετος πρὸς τὸ Σύνταγμα καὶ/ἢ ἀπετέλεσε προϊὸν αὐθαιρεσίας καὶ/ἢ δὲν ἐδικαιολογεῖτο ἀπὸ τὴν ἐνώπιον τοῦ πειθαρχικοῦ Δικαστηρίου μαρτυρίαν. (θ) Ἡ ἀπόφασις δὲν ἐστηρίζετο καὶ/ἢ δὲν ἐδικαιολογεῖτο ἀπὸ τὴν μαρτυρίαν καὶ/ἢ ἦτο προϊὸν αὐθαιρέτου καὶ/ἢ κακῆς ἐκτιμήσεως τῆς μαρτυρίας. (ι) Γενικῶς ἡ ἀπόφασις ἦτο ὅλως παράνομος καὶ τελείως ἀδικαιολόγητος.

Ἀντιθέτως τὴν 9 Ὀκτωβρίου, 1976, ὁ συνήγορος τῆς Δημοκρατίας κ. Ν Χαραλάμπους ἰσχυρίσθη ὅτι ἡ προσβαλλομένη ἀπόφασις ἐλήφθη νομίμως κατόπιν ἐπαρκοῦς ἐρεύνης καὶ ὀρθῆς ἐκτιμήσεως ἁπάντων τῶν σχετικῶν στοιχείων τῆς ὑποθέσεως ὑπὸ

τοῦ καθ' οὗ ἡ αἴτησις. Τὰ γεγονότα ἐπὶ τῶν ὁποίων στηρίζεται ἡ ἔνστασις ἔχουν ὡς ἀκολούθως: (1) Ὁ αἰτητὴς ἐνεγράφη εἰς τὴν Ἀστυνομίαν τὴν 10 Νοεμβρίου, 1959, καὶ ἐστάθμευε εἰς τὸν Ἀστυνομικὸν Σταθμὸν Λάρνακος. (2) Μετὰ τὴν Τουρκικὴν εἰσβολὴν κατέστη πρόδηλος ἡ ἐπιθυμία τῆς Τουρκικῆς ἡγεσίας ὅπως οἱ Τ/Κ οἱ παραμείναντες εἰς τὸν ἐλεύθερον χῶρον τῆς Δημοκρατίας μετακινηθῶσι εἰς τὰς Τουρκοκρατουμένας περιοχάς. Πρὸς παρεμπόδισιν τούτων ἐδόθησαν ὁδηγίαι ὑπὸ τοῦ Ἀρχηγοῦ Ἀστυνομίας ὅπως ἀνεγερθοῦν ὁδοφράγματα τὰ ὁποῖα νὰ ἐπανδροῦνται ὑπὸ Ἀστυνομικῶν καὶ στρατιωτῶν πρὸς παρεμπόδισιν τῶν Τ/Κ νὰ μετακινηθοῦν εἰς τὸν βορρὰν καὶ πρὸς ἔλεγχον παντὸς διερχομένου ὀχήματος. (3) Τὴν 22 Φεβρουαρίου, 1975, ὁ αἰτητὴς ὁμοῦ μετὰ τοῦ Ἀστυφύλακος Ἀρ. 3811 Χ. Ἀνδρέου καὶ δύο στρατιωτῶν *ὀνόματι Ἀναστάσιος Χ'' Τοφῆς* καὶ Ἀντώνης Πάμπουλλος ἀνέλαβον ὑπηρεσίαν εἰς τὸ ὁδόφραγμα τὸ ὁποῖον εὑρίσκεται ἐπὶ τῆς κυρίας ὁδοῦ Λάρνακος—Δεκέλειας διὰ τὸν ἄλλωθι σκοπόν. (4) Κατὰ τὴν διάρκειαν τῆς ὑπηρεσίας τοῦ αἰτητοῦ καὶ μεταξὺ τῆς 0230–0245 ὥρ. τῆς 22 Φεβρουαρίου, 1975, εἰς τὸ ἐν λόγῳ ὁδόφραγμα οὗτος ἐπέτρεψε εἰς τὸ ὄχημα BQ 146 ὁδηγούμενον ὑπὸ τοῦ Ἀνδρέα Παντελῆ Σιεμπῆ καὶ μεταφέρων Τ/Κ νὰ διέλθη τοῦ ὁδοφράγματος ἄνευ τοῦ νενομισμένου ἐλέγχου. Ἡ πρᾶξις αὕτη τοῦ αἰτητοῦ ἔδωσε ἀφορμὴ εἰς τοὺς δύο προαναφερθέντας στρατιώτας νὰ ἀντιδράσουν ὡς ἀποτέλεσμα δὲ τῆς ἀντιδράσεως αὐτῆς ἡ ἀπόπειρα δύο ἄλλων ὀχημάτων ὁδηγούμενα ὑπὸ δύο Τ/Κ νὰ διέλθουν τὴν ἰδίαν στιγμὴν τοῦ ὁδοφράγματος ἀπέτυχε. Οἱ ὁδηγοὶ τῶν ἐν λόγῳ ὀχημάτων ἦσαν οἱ Κιαμὴλ Χουσεῖν ἐκ Πύλας καὶ Ὀσμὰν Μεχμὲτ ἐκ Λάρνακος. Ἀμφότερα τὰ ὀχήματα ὡδηγήθησαν εἰς τὸν Ἀστυνομικὸν Σταθμὸν δι' ἔρευναν. (5) Ὁ Ἀστυνομικὸς Διευθυντὴς Λάρνακος ἀφοῦ ἔλαβε γνῶσιν τῶν γεγονότων ἔδωσε ὁδηγίας ὅπως διερευνηθῇ πειθαρχικὴ ὑπόθεσις ἐναντίον τοῦ αἰτητοῦ εἰς τὴν παροῦσαν ὑπόθεσιν. Ἡ διερεύνησις τῆς *ὑποθέσεως ἀνετέθη εἰς τὸν Ὑπαστυνόμον Ι. Φράγκον.* Οὗτος διηρεύνησε ταύτην καὶ τὴν 25 Φεβρουαρίου, 1975, προέβη εἰς ἀναφορὰν πρὸς τὸν Ἀστυνομικὸν Διευθυντὴν Λάρνακος. Ὁ Ἀστυνομικὸς Διευθυντὴς Λάρνακος δυνάμει τοῦ Κανονισμοῦ 10 τῶν περὶ Ἀστυνομίας (Πειθαρχικῶν) Κανονισμῶν ἡτοίμασε τὸ Πειθαρχικὸν Ἔντυπον καὶ διώρισε τὸν Ἀνώτερον Ὑπαστυνόμον Ξ. Ρόπαλην νὰ ἐκδικάσῃ τὴν πειθαρχικὴν ὑπόθεσιν δυνάμει τοῦ Κανονισμοῦ 14(2) τῶν περὶ Ἀστυνομίας (Πειθαρχικῶν) Κανονισμῶν. Ὁ Ἀνώτερος Ὑπαστυνόμος Ξ. Ρόπαλης ὥρισε τὴν ὑπόθεσιν διὰ τὴν 26 Φεβρουαρίου, 1975, καὶ ἤκουσε μαρτυρίαν τὴν 1 Μαρτίου, 1975, 20 Μαρτίου, 1975, 21 Μαρτίου, 1975,

καὶ 27 Μαρτίου, 1975. Τὴν 31 Μαρτίου, 1975, ὁ Προεδρεύων Ἀξιωματικὸς ἐξέδωσε τὴν ἀπόφασίν του καὶ ἐπέβαλε πρόστιμον £10 διὰ τὴν πρώτην κατηγορίαν καὶ £5 πρόστιμον διὰ τὴν δευτέραν κατηγορίαν. (6) Ὁ Ἀστυνομικὸς Διευθυντὴς Λάρνακος ἐνασκῶν τὰς ἐξουσίας του δυνάμει τοῦ Κανονισμοῦ 18(4) τῶν περὶ Ἀστυνομίας (Πειθαρχικῶν) Κανονισμῶν ἀναθεώρησε τὴν ὑπόθεσιν καὶ ἀφοῦ ἤκουσε τὸν αἰτητὴν μετέτρεψε τὴν ποινὴν εἰς "ἐξαναγκασμὸν πρὸς παραίτησιν". (7) Ὁ αἰτητὴς τὴν 14 Ἀπριλίου, 1975, ἐφεσίβαλε τὴν πειθαρχικὴν ὑπόθεσιν εἰς τὴν ὁποίαν κατεδικάσθη εἰς "ἐξαναγκασμὸν πρὸς παραίτησιν" ἐνώπιον τοῦ Ἀρχηγοῦ Ἀστυνομίας. Ἡ ἔφεσις ἠκούσθη μεταξὺ τῆς 13 Νοεμβρίου, 1975, καὶ 29 Ἀπριλίου, 1976, ὑπὸ τοῦ Ὑπαρχηγοῦ τῆς Ἀστυνομίας ὁ ὁποῖος ἐπεκύρωσε τὴν ἀπόφασιν περὶ "ἐξαναγκασμοῦ πρὸς παραίτησιν" τοῦ αἰτητοῦ.

Τὴν 13 Δεκεμβρίου, 1976, ὁ συνήγορος τοῦ αἰτητοῦ κ. Ε. Εὐσταθίου περαιτέρω παρέθεσε τοὺς ἑξῆς νομικοὺς λόγους: (α, δ, ζ) Τὸ πειθαρχικὸν Ἐφετεῖον τῆς Ἀστυνομίας, θὰ ἔδει βάσει τῆς ἐνώπιον του μαρτυρίας, νὰ ἀθωώσῃ τὸν αἰτητὴν, ὡς ἀπεφάνθη ἐπὶ τῶν ἰδίων γεγονότων τὸ Ἀνώτατον Δικαστήριον εἰς τὴν ὑπόθεσιν Ἐφταψούμη καὶ Ἄλλου ἐναντίον Τῆς Ἀστυνομίας (1975) 2 Α.Α.Δ. σελὶς 149 καταπατήσαν τοιουτοτρόπως τὴν ἀρχὴν τοῦ δεδικασμένου. (β, γ, θ, στ) Ἡ ἀπόφασις τοῦ Πειθαρχικοῦ Ἐφετείου δὲν ἐδικαιολογεῖτο ἐν ὄψει τῆς προσαχθείσης μαρτυρίας καὶ τῶν περιστάσεων τῆς ὑποθέσεως, καθ' ὅτι ἡ ἐπ' αὐτοῦ ἀποδεχθεῖσα μαρτυρία, ἐθεωρήθη ὡς ἀναξιόπιστος καὶ ἀνασφαλὴς ὑπὸ τοῦ Ἀνωτάτου Δικαστηρίου εἰς τὴν ὑπόθεσιν Ἐφταψούμη καὶ Ἄλλου ἐναντίον Τῆς Ἀστυνομίας (1975) 2 Α.Α.Δ. σελὶς 149. (ε, η) Διὰ τοὺς ἄνωθι ἐκτεθέντας ἐν παραγράφοις 1 καὶ 2 λόγους, ἡ ἀπόφασις τῶν καθ' ὧν ἡ αἴτησις νὰ ἐπικυρώσωσι τὴν εἰς ἐξαναγκασμὸν καὶ παραίτησιν τοῦ αἰτητοῦ, ἀποτελεῖ παράβασιν τῆς Ἀρχῆς τῆς Φυσικῆς Δικαιοσύνης καὶ τοῦ Συντάγματος καθ' ὅτι τὸ Πειθαρχικὸν Δικαστήριον παρεβίασε τὴν ἀρχὴν ὅτι ἐν τῇ διαγνώσει ὑποθέσεως τινος δέον ὅπως ἐξετάζεται οὐχὶ μόνον ἡ μαρτυρία ἥτις προσεκομίσθη ὑπὸ τῆς κατηγορούσης ἀρχῆς, ἀλλὰ, καὶ ἡ μαρτυρία καὶ κατάθεσις τοῦ αἰτητοῦ καὶ τῶν μαρτύρων του. Τὸ πειθαρχικὸν Ἐφετεῖον παρανόμως ἐξέλαβε καὶ/ἢ ἔλαβε ὑπ' ὄψιν ὅτι συντρέχουν προϋποθέσεις καὶ/ἢ στοιχεῖα θεμελιοῦντα πειθαρχικὸν ἀδίκημα ἐναντίον τοῦ αἰτητοῦ, καθ' ὅτι ἀπεδέχθη τὴν ὕπαρξιν γεγονότων ὡς ἀποδειχθέντων καὶ/ἢ ὑπαρχόντων ὅπου τοῦτο δὲν συνέβαινε, ὡς ἀπο-

τέλεσμα δὲ τούτου, ἦτο νὰ ἐκδοθῆ καταδικαστικὴ ἀπόφασις ἐναντίον τοῦ αἰτητοῦ.

Τὴν 10 Ἰανουαρίου, 1977, ὁ κ. Κούτρας ὑπέβαλε παράκλησιν διὰ τὸν ὁρισμὸν τῆς ἀκροάσεως τῆς ὑποθέσεως καὶ ἡ ὑπόθεσις ὡρίσθη διὰ τὴν 6 Ἀπριλίου, 1977. Τὴν 2 Ἀπριλίου, 1977, καὶ οἱ δύο συνήγοροι ὑπέβαλαν γραπτὴν κοινὴν παράκλησιν διὰ τὴν ἀναβολὴν τῆς ἀκροάσεως τῆς ὑποθέσεως ἡ ὁποία ὡρίσθη διὰ τὴν 6 Ἀπριλίου, 1977, λόγω διαβημάτων τοῦ αἰτητοῦ πρὸς ἐπαναπρόσληψίν του, τὸ ἀποτέλεσμα τῶν ὁποίων δὲν ἦτο μέχρι τότε γνωστὸν. Ἡ ὑπόθεσις ὡρίσθη διὰ μνείαν διὰ τὴν 4 Ἰουνίου, 1977 καὶ ἐν συνεχείᾳ ὡρίσθη τὴν 20 Ἰανουαρίου, 1978, διὰ ἀκρόασιν. Τὴν 20 Ἰανουαρίου, 1978, λόγω δυσκολιῶν τοῦ συνηγόρου τῆς Δημοκρατίας ἡ ὑπόθεσις ἀνεβλήθη καὶ πάλιν καὶ ὡρίσθη διὰ τὴν 5 Ἰουνίου, 1978.

Ὁ συνήγορος τῆς Πολιτείας κ. Χατζηπέτρου ἰσχυρίσθη ὅτι οὐδεμία παραβίασις ἐγένετο τῶν ἀστυνομικῶν κανονισμῶν καὶ οὐδεὶς ἐνήργησε καθ' ὑπέρβασιν ἐξουσίας, ἀλλὰ ἀντιθέτως (α) ἐτηρήθησαν αἱ παραδεδειγμέναι ἀρχαὶ τῆς φυσικῆς δικαιοσύνης. Περαιτέρω ἰσχυρίσθη (β) ὅτι τὰ γεγονότα τῆς πειθαρχικῆς ὑποθέσεως εἶναι τὰ ἴδια μὲ τῆς ποινικῆς καὶ ὡς ἐκ τούτου τὸ πειθαρχικὸν ὄργανον δὲν ἐδεσμεύετο ἐκ τῆς ἀποφάσεως τοῦ Ποινικοῦ Δικαστηρίου· (γ) ὅτι ὅσον ἀφορᾶ τὴν ἐπίδρασιν τὴν ὁποίαν ἀσκεῖ ἐπὶ τῆς πειθαρχικῆς δίκης τὸ δεδικασμένο ἐκ ποινικῶν ἀποφάσεων, τὸ Συμβούλιον Ἐπικρατείας ἔκρινεν ὅτι ἐφ' ὅσον ὁ ποινικὸς Δικαστὴς περιβαλλόμενος ὑπὸ πλειόνων ἐγγυήσεων ἢ ὁ Πειθαρχικὸς ἐδέχθη τὴν ὕπαρξιν ἢ ἀνυπαρξίαν ὡρισμένων πραγματικῶν περιστατικῶν ὁ Πειθαρχικὸς Δικαστὴς ὀφείλει νὰ δεχθῆ τὴν τοιαύτην ὕπαρξιν ὅσον ἀφορᾶ τὸ ἀντικειμενικῶς ὑπόστατον τῶν περιστατικῶν τούτων χωρὶς ὅμως νὰ δεσμεύεται ὅπως ὑπαγάγῃ ἢ μὴ ὑπαγάγῃ τὰ αὐτὰ περιστατικὰ εἰς τὴν ἔννοιαν τοῦ πειθαρχικοῦ ἀδικήματος. Ἴδε ἐπίσης τὰ Πορίσματα Νομολογίας 1929–1959 σελίδα 364· καὶ εἰς τὸ "Διοικητικὸν Ἑλληνικὸν Δίκαιον" ὑπὸ Η. Κυριακοπούλου Τόμος Γ Ἔκδοσις 4 σελίδα 281 ὅπου ἀναφέρονται τὰ ἑξῆς:

" Ὁ κανὼν τοῦ ποινικοῦ δικαίου non bis in idem— καθ' ὃν οὐδεὶς ἐπιτρέπεται νὰ διωχθῆ ἐκ νέου διὰ τὴν αὐτὴν ἀξιόποινον πρᾶξιν, δι' ἣν ἐξεδόθη ἤδη τελεσίδικος ἀπόφασις ἢ ἀπαλλακτικὸν βούλευμα—δὲν ἰσχύει, τοὐλάχιστον ἀπολύτως, ἐν τῷ πειθαρχικῷ δικαίῳ. Οὕτως, ἀνεγνωρίσθη μὲν, ὅτι διὰ τὸ αὐτὸ πειθαρχικὸν ἀδίκημα δὲν ἐπιτρέπεται

οὔτε ἐκ δευτέρου δίωξις, οὔτε ἡ ἐπιβολὴ παρὰ τοῦ αὐτοῦ ὀργάνου καὶ δευτέρας ποινῆς*. Ἀλλά, ἐὰν ὁ ἱεραρχικῶς προϊστάμενος κρίνῃ ἀνεπαρκῆ τὴν ἐπιβληθεῖσαν ποινήν, δικαιοῦται νὰ ἐπιβάλῃ καὶ ἑτέραν πειθαρχικὴν ποινήν**.

'Η ἐκκρεμότης τῆς ποινικῆς κατηγορίας δὲν κωλύει τὴν πειθαρχικὴν δίωξιν, ἥτις εἶναι ἀνεξάρτητος ἐκείνης***: 'ἡ πειθαρχικὴ δίκη εἶναι αὐτοτελὴς καὶ ἀνεξάρτητος πάσης ἄλλης δίκης' (ἄρθ. 138 παράγραφος 1)· ἐννοεῖται δὲ κυρίως τῆς ποινικῆς, οὐχ ἧττον ὅμως καὶ τῆς ἀστικῆς. 'Η ποινικὴ καταδίκη ἄρα δὲν κωλύει τὴν ὑστέραν ἐπιβολὴν πειθαρχικῆς ποινῆς διὰ τὴν αὐτὴν πρᾶξιν****. 'Αλλ' ἐὰν προηγήθη τελεσίδικος ἀπόφασις τοῦ ποινικοῦ δικαστηρίου περὶ τῆς αὐτῆς πράξεως, δι' ἣν ἐνεργεῖται πειθαρχικὴ δίωξις, τὰ 'πραγματικὰ γεγονότα', ὧν τυχὸν ἡ ὕπαρξις ἢ ἡ ἀνυπαρξία διεπιστώθη διὰ τῆς ποινικῆς ἀποφάσεως, ὀφείλει ἡ πειθαρχικὴ ἀρχὴ νὰ δεχθῇ ὡς ταῦτα ἐβεβαιώθησαν ἐν τῇ ποινικῇ δίκῃ (ἄρθ. 138 παράγραφος 3 ἐδ. α'). Πρόκειται περὶ ἐπενεργείας βεβαιώσεως (βλ. ἀνωτ παράγραφος 20, 4, β)*****. Κατ' ἀκολουθίαν, ὁ ὑπὸ τοῦ ποινικοῦ δικαστηρίου καταδικασθεὶς ὑπάλληλος δὲν δύναται νὰ θεωρηθῇ παρὰ τοῦ πειθαρχικοῦ δικαστοῦ, ὅτι δὲν διέπραξε τὴν αὐτὴν πρᾶξιν· ἀλλὰ καὶ ἐν τῇ ἀντιθέτῳ περιπτώσει, ὁ ἀθῳωθεὶς ὑπάλληλος παρὰ τοῦ ποινικοῦ δικαστηρίου διὰ τὴν ἀποδοθεῖσαν αὐτῷ πρᾶξιν, δὲν δύναται νὰ χαρακτηρισθῇ ἔνοχος ταύτης ὑπὸ τοῦ πειθαρχικοῦ δικαστοῦ******. Οὕτω διασφαλίζεται ἡ ἑνότης ἐν τῇ ἀπονομῇ τῆς δικαιοσύνης".

Θὰ ἦτο χρήσιμον νὰ προσθέσω ὅτι εἰς τὴν ἔφεσιν τῆς πειθαρχικῆς ὑποθέσεως ὁ 'Υπαρχηγὸς τῆς 'Αστυνομίας Παῦλος Ζ. Στόκκος εἰς τὴν ἀπόφασίν του ἀναφέρει τὰ ἑξῆς:

"Εὑρίσκω ὅτι οἱ λόγοι ἀπαλλαγῆς τῶν κατηγορουμένων ὑπὸ τοῦ 'Ανωτάτου Δικαστηρίου διὰ τὰ ποινικὰ ἀδικήματα δὲν συντρέχουν διὰ τὴν παροῦσαν 'Υπόθεσιν.

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* Σ.Ε. 600/1932, 501, 576/1933, 431/1934.

** Σ.Ε. 802/1933, 262, 320/1939. Βλ. καὶ κατ. ὑπὸ 10, α.

*** Σ.Ε. 173, 975/1936, 862/1938, 148, 261/1939 κ.ἄ.π. Α.Π. 104/1905, Θέμις ΙΓ, σ. 490, 161/1915, αὐτ. ΚΓ, σ. 574.

**** Σ.Ε. 295/1933, 705/1934. Α.Π. 39/1905, Θέμις ΙΓ, σ. 628.

***** Πρβλ. Σ.Ε. 125/1929, 1/1937, 2388/1953, 1554/1959.

****** Βλ. παραδείγματα Σ.Ε. 381/1939, 497/1940, 789/1954.

Οἱ ἰσχυρισμοὶ τῶν μαρτύρων κατηγορίας τῆς ποινικῆς Ὑποθέσεως περὶ σωματικῶν βασάνων, ψυχικὸν πειθαναγκασμόν, ἀπειλῶν διαπομπεύσεως κλπ. δὲν ἰσχύουν διὰ τὴν παροῦσαν ὑπόθεσιν, διότι οὐδεὶς τῶν μαρτύρων κατηγορίας τῆς παρούσης πειθαρχικῆς Ὑποθέσεως ἰσχυρίσθη τοιοῦτον τι, πλὴν τοῦ Ὀσμὰν Μεχμὲτ ἐξ Ἀγγλισίδων ὅστις ἰσχυρίσθη ὅτι ἐκακοποιήθη, χωρὶς ὅμως νὰ ἀποδειχθῆ ὅτι πράγματι οὗτος ἐκακοποιήθη. Ἐν πάσῃ ὅμως περιπτώσει ὁ μάρτυς οὗτος ἐκηρύχθη ἐχθρικὸς ὑπὸ τῆς κατηγορούσης ἀρχῆς καὶ εἰς τὴν ἀπόφασιν μου δὲν θὰ λάβω ὑπ' ὄψιν τὴν μαρτυρίαν του.

Εὑρίσκω ὅτι οὐδεὶς λόγος ὑπάρχει διὰ νὰ ἐπέμβω εἰς τὴν ἀπόφασιν τοῦ Κατωτέρου Πειθαρχικοῦ Δικαστηρίου ὅσον ἀφορᾶ τὰ εὑρήματά του διὰ τὴν ἀξιοπιστίαν τῶν μαρτύρων κατηγορίας. Εἰς τὴν ἀπόφασίν του τὸ Κατώτερον Πειθαρχικὸν Δικαστήριον ἀναφέρει ὅτι ἐπίστεψε τοὺς μάρτυρας κατηγορίας. Εἶναι φυσικὸν ὅτι διὰ νὰ καταδικάση τοὺς κατηγορουμένους σημαίνει ὅτι δὲν ἐπίστεψε τούτους.

Ἔγινεν εἰσήγησις ὑπὸ τῆς ὑπερασπίσεως ὅτι τὸ Ἀνώτατον Δικαστήριον δὲν ἀπεδέχθη τὴν μαρτυρίαν τῶν μαρτύρων κατηγορίας στρατιωτῶν Ἀντώνη Πάμπουλου καὶ Ἀναστασίου Χ'' Τοφῆ. Οὐδαμοῦ ὅμως εἰς τὴν ἀπόφασιν τοῦ Ἀνωτάτου Δικαστηρίου φαίνεται τοιοῦτον τι. Τουναντίον οἱ μάρτυρες τοῦτοι ἔγιναν πιστευτοὶ καὶ ὑπὸ τοῦ ἐκδικάζοντος τὴν Ποινικὴν ὑπόθεσιν Ποινικοῦ Δικαστηρίου.

Εὑρίσκω ὅτι ἡ ἀπόφασις τοῦ Κατωτέρου Πειθαρχικοῦ Δικαστηρίου ἦτο καθ' ὅλα εὔλογος καὶ δικαιολογημένη, ἐν ὄψει τῆς ἐνώπιόν του μαρτυρίας.

Οἱ λόγοι τῆς ἐφέσεως δὲν εὐσταθοῦν καὶ διὰ τοῦτο ἡ Ἔφεσις ἀπορρίπτεται καὶ δυνάμει τῶν ἐξουσιῶν δι' ὧν περιβέβλημαι συμφώνως τοῦ κανονισμοῦ 21(ε) τῶν περὶ Ἀστυνομίας Πειθαρχικῶν Κανονισμῶν ἐπικυρώνω τὴν καταδίκην καὶ ποινὴν ὡς αὕτη ἀναθεωρήθη ὑπὸ τοῦ Ἐπαρχιακοῦ Δικαστηρίου Λάρνακος''.

Δὲν χωρεῖ καμμίαν ἀμφιβολίαν ὅτι κατὰ τὴν ἀκροαματικὴν διαδικασίαν τὰ ἁρμόδια Δικαστήρια τὰ ἐπιληφθέντα τῶν ὑποθέσεων ἀπήλλαξαν καὶ ἀθώωσαν τοὺς δύο κατηγορουμένους, (ἀτυχῶς ὁ εἷς ἐξ αὐτῶν ὀνόματι Ἀνδρέας Στυλιανοῦ Ἐφταψούμη ἐν τῷ

μεταξὺ ἀπεβίωσε). Παρ' ὅλον, ἐπαναλαμβάνω, ὅτι εἰς τὴν πειθαρχικὴν ὑπόθεσιν ἐναντίον τοῦ αἰτητοῦ Μίθυλλου ἡ ὑπεράσπισις παραπονεῖται ὅτι ἡ ἀστυνομικὴ ἀρχὴ τῆς Δημοκρατίας ἐνήργησε παρανόμως καὶ κατὰ τρόπον ἰσοδυναμοῦντα μὲ ὑπέρβασιν ἢ κατάχρησιν ἐξουσίας, καὶ ἐνῶ τὰ γεγονότα τῶν πειθαρχικῶν ὑποθέσεων ἐναντίον τοῦ αἰτητοῦ εἶναι τὰ ἴδια καὶ ἀποτελοῦν τὴν ἔκθεσιν τῶν γεγονότων εἰς πειθαρχικὰς ὑποθέσεις ἐναντίον του διὰ τὰς ὁποίας ὁ αἰτητὴς ἐδικάσθη ὑπὸ τοῦ ἁρμοδίου Δικαστηρίου καὶ ἠθωώθη, ἐν τούτοις ἐνῶ τὸ τοιοῦτον θὰ ἔπρεπε νὰ ἀποτελέσῃ δεδικασμένον διὰ τὰς ὑποθέσεις αὐτὰς δὲν ἐλήφθη καθόλου ὑπ' ὄψιν καὶ ὁ κατ' ἔφεσιν ἐνεργῶν Ὑπαρχηγὸς τῆς Ἀστυνομίας ἐπεκύρωσε τὰς ἀποφάσεις τοῦ πρωτοδίκου Δικαστηρίου καὶ ἀπέλυσε τὸν αἰτητὴν ἀπὸ τὴν ἐργασίαν του.

Θὰ ἦτο χρήσιμον ἐπίσης νὰ προσθέσω ὅτι κατ' ἔφεσιν ἐνώπιον τοῦ Ἀνωτάτου Δικαστηρίου τὸ Ἀνώτατον Δικαστήριον ἠθώωσε τὸν αἰτητὴν εἰς ὅλας τὰς κατηγορίας πλὴν μίας διὰ τὴν ὁποίαν διέταξε ἐπανεξέτασιν. Περαιτέρω ἐδικάσθησαν ἐπίσης ὑπὸ τοῦ κ. Πικῆ, Προέδρου Ἐπαρχιακοῦ Δικαστηρίου Λάρνακος, καὶ ἀθωώθησαν χωρὶς νὰ ἐφεσιβληθῇ ἡ ἀπόφασις. Θὰ ἦτο ὅμως παράλειψις νὰ μὴν ἀναφέρω ὅτι ὡς ἀποτέλεσμα, εἰς ὅλας τὰς ἐναντίον του κατηγορίας αἱ ὁποῖαι ἐβασίζοντο ἐπὶ τῶν αὐτῶν πραγματικῶν γεγονότων, τὰ ἴδια γεγονότα ἀφοροῦσαν καὶ τὰς πειθαρχικὰς ὑποθέσεις ἐναντίον του. Ὁ Πρόεδρος τοῦ Ἀνωτάτου Δικαστηρίου κ. Τριανταφυλλίδης ἐκδίδων τὴν ἀπόφασιν τοῦ Ἐφετείου εἰς τὴν ὑπόθεσιν Ἀνδρέα Στυλιανοῦ Ἐφταψούμη καὶ Κώστα Γαβριὴλ Μίθυλλου ἐναντίον Τῆς Ἀστυνομίας (1975) 2 Α.Α.Δ. 149 παρετήρησε τὰ ἀκόλουθα εἰς τὰς σελίδας 156, 157 καὶ 158:

> "As the trial Judge has wrongly treated what he found to be false testimony of the appellants as amounting to corroboration of the evidence against them of the accomplice Siempis (see *Vouniotis* v. *The Republic*, reported in this Part at p. 34, at p. 50 et seq.) and as the evidence of Siempis and of the aforesaid other prosecution witness, even if technically in law admissible in evidence, could not be safely relied on, because they had been illtreated by the police before making to them statements implicating the appellants, we have reached the conclusion that, in the interests of the proper administration of justice, we have to set aside the convictions on counts 4 and 14.
>
> We might not have been prepared to interfere, on appeal,

with the decision of the trial judge to act on the uncorroborated evidence of this accomplice, had it not been for the fact that, in evaluating his evidence, the judge was obviously influenced in believing him—(as can be derived from his judgment)—by the consideration that the credibility of the appellants had, in his opinion, been demolished, for reasons which, as he put it, were to be stated by him later on in his judgment; and the main such reasons appear to be the reasons for which he disbelieved the appellants when comparing their evidence with that of the aforementioned prosecution witness Siempis; in this connection the trial judge observed that the credibility of the appellants was inextricably related to the credibility of Siempis.

Having already held that it was not safe for the trial judge to treat the evidence of witness Siempis as reliable, we are bound to reach the conclusion that a fundamental consideration which did influence the trial judge in deciding to act on the uncorroborated evidence of the accomplice Mikis, and convict the appellants on count 3, was an erroneous one. As we cannot and should not speculate as to whether or not, had he not been influenced as above, the trial judge would still have treated the uncorroborated evidence of the accomplice Mikis as reliable—and we express no opinion at all in this respect as to what he could or should have done—we do not think that we can uphold the conviction of the appellants on count 3".

Ως ἐκ τῶν ἀνωτέρω καθίσταται σαφὲς ὅτι τὸ μοναδικὸν νομικὸν σημεῖον ἐπὶ τοῦ ὁποίου καλεῖται τὸ Δικαστήριον νὰ ἀποφασίση εἶναι κατὰ πόσον ἀθωωθέντος ὑπὸ Ποινικοῦ Δικαστηρίου τοῦ κατηγορηθέντος δημοσίου ὑπαλλήλου κωλύεται τὸ Πειθαρχικὸν Δικαστήριον νὰ τιμωρήθη πειθαρχικῶς τὸν ὑπάλληλον εἰς τὰς αὐτὰς κατηγορίας.

Περίληψιν τῆς σχετικῆς ἐπὶ τοῦ σημείου τούτου νομολογίας τοῦ Συμβουλίου Ἐπικρατείας τῆς Ἑλλάδος εὑρίσκομεν εἰς τὴν σελίδα 364 τῶν Πορισμάτων Νομολογίας τοῦ συμβουλίου Ἐπικρατείας 1959 ἡ ὁποία ἔχει ὡς ἀκολούθως:

" Ὅσον ἀφορᾷ τὴν ἐπίδρασιν ἣν ἀσκεῖ ἐπὶ τῆς πειθαρχικῆς δίκης τὸ δεδικασμένον ἐκ ποινικῶν ἀποφάσεων, τὸ Συμβούλιον τῆς Ἐπικρατείας ἔκρινεν, ὅτι ἐφ' ὅσον ὁ ποινικὸς δικαστὴς,

περιβαλλόμενος ὑπὸ πλειόνων ἐγγυήσεων, ἢ ὁ πειθαρχικὸς, ἐδέχθη τὴν ὕπαρξιν ἢ ἀνυπαρξίαν ὡρισμένων πραγματικῶν περιστατικῶν, ὁ πειθαρχικὸς δικαστὴς ὀφείλει νὰ δεχθῇ τὴν τοιαύτην κρίσιν ὅσον ἀφορᾷ τὸ ἀντικειμενικῶς ὑπόστατον τῶν περιστατικῶν τούτων, χωρὶς ὅμως νὰ δεσμεύηται ὅπως ὑπαγάγῃ ἢ μὴ ὑπαγάγῃ τὰ αὐτὰ περιστατικὰ εἰς τὴν ἔννοιαν τοῦ πειθαρχικοῦ ἀδικήματος: 125 (29), 1066 (37), 2388 (53), 1654 (57). (Ταῦτα ἀποτελοῦν πλέον καὶ θετικὸν δίκαιον δυνάμει τοῦ ἄρθρου 138 παράγραφος 3 τοῦ Ὑπαλ. Κώδικος). Κατ' ἀκολουθίαν τούτων οὐχὶ ἁπλῶς ἡ ἀπαλλαγὴ, ἀλλὰ καὶ ἡ ἀθώωσις ὑπὸ τοῦ ποινικοῦ δικαστοῦ δὲν ἀποκλείει τὴν πειθαρχικὴν δίωξιν διὰ τὸ ἐπὶ τοῦ αὐτοῦ πραγματικοῦ περιστατικοῦ στηριζόμενον πειθαρχικὸν ἀδίκημα, τοῦ πειθαρχικοῦ δικαστοῦ ἐκτιμῶντος κατ' ἰδίαν κρίσιν τὰς προσκομισθείσας ἀποδείξεις: 876 (37) 1337 (54), 1381 (54). Κατὰ μείζονα δὲ λόγον ἀθώωσις ὑπαλλήλου ὑπὸ τοῦ ποινικοῦ δικαστηρίου, χωρήσασα λόγῳ ἀμφιβολιῶν, δὲν ἀποτελεῖ δεδικασμένον, οὐδὲ θεωρεῖται ὁπωσδήποτε νομικὸν κώλυμα διὰ τὴν ἐπιβολὴν πειθαρχικῆς ποινῆς: 488 (31), 876 (37), 2046 (1950). Ὁπωσδήποτε δὲ δὲν παραβιάζεται ὑπὸ πειθαρχικῆς καταδικαστικῆς ἀποφάσεως τὸ ἐξ ἀθωωτικοῦ βουλεύματος δεδικασμένον, ἐφ' ὅσον τοῦτο δὲν ἀποφαίνεται κατηγορηματικῶς περὶ τῆς ὑπάρξεως ἢ μὴ ὡρισμένων πραγματικῶν περιστατικῶν: 2462 (52) οὐδὲ παρακωλύεται ἐκ τοιούτου βουλεύματος ἡ ἐκ μέρους τοῦ πειθαρχικοῦ δικαστοῦ διάφορος ἐκτίμησις τοῦ ἀποδεικτικοῦ ὑλικοῦ: 1642 (53)".

Ἐκ τοῦ ὡς ἄνω ἀποσπάσματος σαφῶς προκύπτουν, μεταξὺ ἄλλων, αἱ ἀκόλουθοι ἀρχαὶ: (1) Ὅτι ὁ Ποινικὸς Δικαστὴς περιβάλλεται ὑπὸ πλειόνων ἐγγυήσεων ἢ ὁ πειθαρχικὸς· (2) Ἐφ' ὅσον ὁ Ποινικὸς Δικαστὴς δεχθῇ τὴν ὕπαρξιν ἢ ἀνυπαρξίαν ὡρισμένων πραγματικῶν περιστατικῶν, ὁ Πειθαρχικὸς Δικαστὴς ὀφείλει νὰ δεχθῇ τὴν τοιαύτην κρίσιν ὅσον ἀφορᾷ τὸ ἀντικειμενικῶς ὑπόστατον τῶν περιστατικῶν τούτων· (3) Καίτοι ὁ Πειθαρχικὸς Δικαστὴς ὀφείλει νὰ δεχθῇ τὴν κρίσιν τοῦ Ποινικοῦ Δικαστοῦ ὅσον ἀφορᾷ τὸ ἀντικειμενικῶς ὑπόστατον ὡρισμένων πραγματικῶν περιστατικῶν δὲν δεσμεύεται ὅπως ὑπαγάγῃ ἢ μὴ ὑπαγάγῃ τὰ αὐτὰ περιστατικὰ εἰς τὴν ἔννοιαν τοῦ πειθαρχικοῦ ἀδικήματος· (4) Οὐχὶ ἁπλῶς ἡ ἀπαλλαγὴ ἀλλὰ καὶ ἡ ἀθώωσις ὑπὸ τοῦ Ποινικοῦ Δικαστοῦ δὲν ἀποκλείει τὴν πειθαρχικὴν δίωξιν διὰ τὸ ἐπὶ τοῦ αὐτοῦ πραγματικοῦ περιστατικοῦ στηριζόμενον ἀδίκημα· (5)

'Ο Πειθαρχικὸς Δικαστὴς δύναται νὰ ἐκτιμήση κατ' ἰδίαν κρίσιν τὰς προσκομισθείσας ἀποδείξεις· (6) 'Αθώωσις λόγω ἀμφιβολιῶν δὲν ἀποτελεῖ δεδικασμένον καὶ δὲν θεωρεῖται νομικὸν κώλυμα διὰ τὴν ἐπιβολὴν ποινῆς.

'Επομένως, ἐπὶ τῇ βάσει τῶν ἀνωτέρω ἀρχῶν δύναται νὰ λεχθῆ ὅτι ἡ ἐπίδρασις, τὴν ὁποίαν ἀσκεῖ ἐπὶ τῆς πειθαρχικῆς δίκης τὸ δεδικασμένον ἐκ ποινικῆς ἀποφάσεως, ἐξαρτᾶται κατὰ μέγα μέρος ἐπὶ τῶν λόγων ἐπὶ τῶν ὁποίων ἐθεμελιώθη ἡ ἀθωωτικὴ ἀπόφασις τοῦ Ποινικοῦ Δικαστηρίου.

'Ως προκύπτει ἐκ τοῦ ἀνωτέρου ἀποσπάσματος τῆς ἀποφάσεως τοῦ 'Ανωτάτου Δικαστηρίου, τὸ 'Ανώτατον Δικαστήριον ἔκρινεν ὅτι τὸ Ποινικὸν Δικαστήριον δὲν ἠδύνατο κατ' ἀσφαλῆ τρόπον νὰ βασισθῆ ἐπὶ τοῦ ἀποδεικτικοῦ ὑλικοῦ ἐπὶ τοῦ ὁποίου ἐβασίσθη διὰ νὰ θεμελιώση τὴν καταδικαστικὴν ἐτυμηγορίαν του, ἐπειδὴ μεταξὺ ἄλλων, οἱ μάρτυρες κατηγορίας ἔτυχαν κακῆς μεταχειρίσεως ὑπὸ ἀστυνομικῶν ὀργάνων προτοῦ προβοῦν εἰς καταθέσεις ἐνοχοποιητικὰς διὰ τοὺς κατηγορουμένους· καὶ τὸ 'Ανώτατον Δικαστήριον κατέληξεν εἰς τὸ συμπέρασμα ὅτι θὰ ἦτο πρὸς τὸ συμφέρον τῆς ὀρθῆς ἀπονομῆς τῆς δικαιοσύνης ἐὰν ἀκυρωνόταν ἡ καταδικαστικὴ ἀπόφασις.

'Εφ' ὅσον δὲ εἰς τὴν προκειμένην περίπτωσιν δὲν τίθεται θέμα ἐκτιμήσεως τῶν προσκομισθεισῶν ἀποδείξεων ὡς ἡ ἀρχὴ (5)· καὶ ἐφ' ὅσον ἡ πειθαρχικὴ καταδίκη ἐθεμελιώθη ἐπὶ τοῦ αὐτοῦ ἀποδεικτικοῦ ὑλικοῦ ὡς ἡ ποινικὴ τοιαύτη· καὶ ἐφ' ὅσον τὸ 'Ανώτατον Δικαστήριον, τὸ ὁποῖον οὐχὶ μόνον περιβάλλεται ὑπὸ πλειόνων ἐγγυήσεων ἢ τὸ Πειθαρχικὸν Δικαστήριον, ἀλλὰ καὶ τὸ ὁποῖον δυνάμει τοῦ Συντάγματος κέκτηνται ἀποκλειστικὴν δικαιοδοσίαν νὰ κρίνη καὶ νὰ ἀποφασίζη τελεσιδίκως ἐπὶ πάσης ποινικῆς ἐφέσεως οἱουδήποτε Ποινικοῦ Δικαστηρίου, ἔκρινεν ὡς ἀνωτέρω ἀνεφέρθη, δύναται κατὰ τὴν γνώμην μου νὰ ἐξαχθῆ τὸ ἀσφαλὲς συμπέρασμα ὅτι ἡ κρίσις αὐτὴ τοῦ 'Ανωτάτου Δικαστηρίου ἰσοδυναμεῖ μὲ τὴν ἀνυπαρξίαν τῶν πραγματικῶν περιστατικῶν ἐπὶ τῶν ὁποίων ἐθεμελιώθη καταδικαστικὴ ἐτυμηγορία τοῦ Ποινικοῦ Δικαστηρίου, καὶ οὕτω ὁ Πειθαρχικὸς Δικαστὴς ὤφειλε, συμφώνως τῆς ἀρχῆς (2) ἀνωτέρω, νὰ δεχθῆ τὴν τοιαύτην κρίσιν τοῦ 'Ανωτάτου Δικαστηρίου. 'Επομένως ἡ ἐπίδικος ἀπόφασις τοῦ Πειθαρχικοῦ Δικαστηρίου κρίνεται ὡς οὖσα ἀντίθετος πρὸς τὸν νόμον ἐντὸς τῆς ἐννοίας τοῦ ἄρθρου 146.1 τοῦ Συντάγματος καὶ ὡς γενομένη καθ' ὑπέρβασιν καὶ κατάχρησιν ἐξουσίας, καὶ ὡς ἐκ τούτου ἀκυροῦται.

'Αλλὰ ὑπάρχει καὶ ἕτερος λόγος διὰ τὸν ὁποῖον ἡ ἐπίδικος ἀπόφασις δέον ὅπως ἀκυρωθῆ. Διὰ τὴν διατήρησιν κράτους δικαίου ὁ συνταγματικὸς νομοθέτης ὥρισε τὸ 'Ανώτατον Δικαστήριον ὡς θεματοφύλακα τῶν θεμελιωδῶν δικαιωμάτων καὶ ἐλευθεριῶν τοῦ ἀτόμου. Καὶ εἶναι ὡς ἐκ τούτου τὸ 'Ανώτατον Δικαστήριον οὐχὶ ἁπλῶς ἓν Ποινικὸν Δικαστήριον ἀλλὰ ὁ πλέον πειστικός, αὐθεντικός, ἔγκυρος καὶ ταυτοχρόνως τελεσίδικος Δικαστὴς (Arbiter) ἁπάσης καταστάσεως ἀφορώσης εἰς τὰ ὡς ἄνω δικαιώματα· καὶ ἐφ' ὅσον ἐπὶ τοῦ ἀποδεικτικοῦ ὑλικοῦ ἐπὶ τῇ βάσει τοῦ ὁποίου ὁ πολίτης ἐστερήθη τῆς ἐλευθερίας αὐτοῦ, ἡ ὁποία διασφαλίζεται ὑπὸ τοῦ ἄρθρου 11 τοῦ Συντάγματος, τὸ 'Ανώτατον Δικαστήριον ἀπεφάνθη ὡς ἀνωτέρω, ἔχω τὴν γνώμην ὅτι, βάσει τῆς ἀρχῆς τῆς βεβαιότητος τοῦ δικαίου καὶ τῆς δικαιοσύνης (principle of certainty of the Law and Justice) ἡ ὁποία εἶναι ἀπαραίτητον χαρακτηριστικὸν κράτους δικαίου (essential feature of the rule of Law) (ἴδε ἀπόφασίν μου εἰς τὴν ὑπόθεσιν Παυλίδη ἐναντίον τῆς Δημοκρατίας (1967) 3 Α.Α.Δ. 217 εἰς σελίδα 230), ὁ πολίτης ἐδικαιοῦτο νὰ ἀναμένῃ ἀπὸ τὸ πειθαρχικὸν ὄργανον σεβασμὸν πρὸς τὴν ἐν προκειμένῳ ἐτυμηγορίαν τοῦ 'Ανωτάτου Δικαστηρίου τῆς Πολιτείας.

Διὰ ὅλους τοὺς λόγους τοὺς ὁποίους ἔχω ἀναφέρει, καὶ ὑπὸ τὸ φῶς τῶν αὐθεντιῶν τὰς ὁποίας ἔχω παραθέσει, κηρύττω τὴν προσβαλλομένην ἀπόφασιν ἢ τὴν πρᾶξιν ἐν ὅλῳ ἄκυρον καὶ ἐστερημένην οἱουδήποτε ἀποτελέσματος.

Προσβαλλομένη ἀπόφασις ἠκυρώθη.

This is an English translation of the judgment in Greek appearing at pp. 698–712 ante.

Public Officers—Disciplinary offences—Acquittal of Public Officer by Criminal Court—Whether Disciplinary Court prevented from punishing him disciplinarily in respect of the same charges.

Certainty of the Law of Justice—Principle of—An essential feature of the rule of law.

The applicant, who was a member of the Police Force, was tried by a Criminal Court and found guilty of offences committed in the course of his duty as a policeman. He appealed against his conviction to the Supreme Court which held that the Criminal Court could not safely rely on the evidence on which it based the conviction because, inter alia, the prosecution witnesses were ill-treated by police organs before making statements

implicating the accused; and arrived at the conclusion that it would have been in the interest of the proper administration of justice if the conviction were set aside.

Following the decision of the Supreme Court the applicant was convicted by a Disciplinary Court of the offences of neglect of duty and unbecoming conduct. The facts of the Criminal Case were similar to those of the disciplinary one.

Upon a recourse against the decision of the Disciplinary Court:

Held, that with regard to the influence exercised on the disciplinary trial by the res judicata of criminal decisions the following principles emanate from case-law:

That the criminal judge is vested with more safeguards than the disciplinary judge; (2) that when the criminal judge accepts the existence or non-existence of certain facts, the disciplinary judge has to accept such decision regarding the objective existence of these facts; (3) that though the disciplinary judge has to accept the decision of the criminal judge regarding the objective existence of certain facts he is not bound to classify or not these facts within the notion of the disciplinary offence; (4) that not merely the discharge but the acquittal by the criminal judge does not exclude the disciplinary prosecution in respect of the offence based on the same facts; (5) that the disciplinary judge can make his own assessment of the evidence; (6) that acquittal due to doubts does not constitute a res judicata and is not considered as a legal impediment for the imposition of punishment.

(2) That since in the instant case there does not arise a question of assessment of the evidence adduced according to principle 5 above; that since the disciplinary conviction was founded on the same evidence as the criminal; and that since the Supreme Court which is vested with more safeguards than the disciplinary court and which also under the Constitution is vested with exclusive jurisdiction to decide finally and conclusively on every criminal appeal from any criminal court, has decided as above-mentioned, in the opinion of this Court, the safe conclusion can be drawn that the decision of the Supreme Court amounts to a non-existence of the facts on which the conviction of the Criminal Court was founded and so the Disciplinary Judge

ought, in accordance with principle 2 above, to accept the decision of the Supreme Court. Therefore, the sub judice decision of the disciplinary court is contrary to law within the meaning of Article 146.1 of the Constitution and as made in excess and abuse of power and is declared null and void accordingly.

Held, further, that there is another reason for which the sub judice decision must be annulled. For sustaining the rule of law the constitutional draftsman has appointed the Supreme Court as the trustee of the fundamental rights and freedoms of the subject. And the Supreme Court is, therefore, not simply a criminal court, but the most credible authentic and valid, and at the same time final arbiter of all situations relating to these rights; and since on the evidence on the basis of which the citizen was deprived of his liberty, which is safeguarded by Article 11 of the Constitution, the Supreme Court has decided as above, I am of opinion, on the basis of the principle of certainty of the law and justice which is an essential feature of the rule of law (see the judgment of this Court in the case *Pavlides* v. *The Republic* (1967) 3 C.L.R. 217 at p. 230) that the citizen was entitled to expect from the disciplinary organ respect for the decision of the Supreme Court of the State.

Sub judice decision annulled.

Cases referred to:

Eftapsoumis and Another v. *Police* (1975) 2 C.L.R. 149;

Pavlides v. *Republic* (1967) 3 C.L.R. 217 at p. 230.

Recourse.

Recourse against the decision of the respondents confirming applicant's requirement to resign from the Police Force of Cyprus.

E. Efstathiou, for the applicant.

Gl. HadjiPetrou, for the respondents.

Cur. adv. vult.

HADJIANASTASSIOU J. read the following judgment. The applicant, Constantinos G. Mithillos, has been a member of the Police Force of Cyprus for the last 16 years past. On the 26th February, 1975, there was filed against the applicant, disciplinary case No. 4/75 by means of which he was charged for neglect of duty and unbecoming conduct. The above case

was tried on 30th March, 1975, and there was imposed on the accused a total fine of £15 in respect of both the above charges. On the 7th April, 1975, the Divisional Police Commander of Larnaca, having reviewed the above case, imposed on the applicant the punishment of compulsory retirement and/or requirement to resign. Parallel to the above disciplinary proceedings, on the 28th March, 1975, there started a criminal prosecution against the applicant before the District Court of Larnaca in Criminal Case No. 1111/75 the facts of which were identical to the above disciplinary case. Applicant was facing a total of 14 counts, the case was heard from the 28th March, 1975 to the 27th June, 1975, and there was imposed on the applicant a sentence of 8 months' imprisonment having been found guilty on two counts and acquitted and discharged on the remaining counts. There is no doubt that the facts of this criminal case were the same as those of the disciplinary case against him.

On June 28, 1975, the applicant appealed against the decision of the District Court of Larnaca by means of Criminal Appeal No 3636. The Supreme Court heard the above appeal (see *Eftapsoumis and Another* v. *The Police*, (1975) 2 C.L.R. 149), and acquitted the applicant of the three counts and ordered a re-hearing of the remaining counts when applicant was acquitted by the District Court of Larnaca.

On the 14th April, 1975, applicant appealed against the decision of the Police Disciplinary Tribunal and the appeal was adjourned until the completion of the hearing of the Criminal Appeal by the Supreme Court. On the 26th April, 1976, the disciplinary appeal was heard and the conviction and sentence of the applicant requiring him to retire was confirmed.

On the 13th July, 1976, applicant filed the present recourse praying for the following relief: (a) A declaration of the Honourable Court that the decision of the respondents to confirm his requirement to resign from the Police Force of Cyprus made on the 29th April, 1976 and/or the decision of the respondents to require applicant to resign and to retire him, dated 7th April, 1975 and/or the decision that applicant be required to resign is null and void and/or illegal and/or devoid of any legal effect and/or the decision ought not to have been taken; (b) costs.

This recourse is based on the following grounds of law; (a) the decision of the respondents is illegal and was taken in abuse and/or excess of powers; (b) the respondents acted under a misconception of fact and/or they relied on a misconceived basis; (c) the respondents acted under a misconception of law and/or fact; (d) the respondents misinterpreted and/or wrongly applied the principles of law relating to a review of a decision and/or on appeal and/or review of disciplinary cases; (e) the respondents infringed the accepted principles of natural justice; (f) the respondents contravened the Police Regulations; (g) the sub judice decision was taken in a manner contrary to the principles of res judicata and contrary to the decision of the Supreme Court, which is reported in (1975) 2 C.L.R. p. 149; (h) the sub judice decision was contrary to the Constitution and/or was the product of arbitrariness and/or was not warranted having regard to the evidence before the disciplinary tribunal; (i) the sub judice decision was not based and/or was not warranted having regard to the evidence and/or was the product of arbitrariness and/or wrong assessment of evidence; (j) generally, the sub judice decision was illegal and entirely unwarranted.

On the contrary, on the 9th October, 1976, counsel of the Republic, Mr. N. Charalambous contended that the sub judice decision was lawfully taken after a due inquiry and a proper evaluation of all the relevant material relating to the case of the respondent. The facts relied upon in opposition are the following:- (1) The applicant was registered in the police force on the 10th November, 1959 and was stationed at Larnaca Police Station; (2) after the Turkish invasion there became apparent the desire of the Turkish leadership that the Turkish Cypriots who remained in the free area of the Republic, do move in the Turkish occupied areas. In order to prevent them there were given instructions by the Chief of Police for the construction of road blocks to be manned by policemen and soldiers so as to prevent the Turkish Cypriots from moving to the north and for the control of every vehicle; (3) on the 22nd February, 1975, applicant together with P.C. No. 3811 Ch. Andreou and two soldiers named Anastassios HjiTofis and Antonios Pamboulos, were on duty on the road block which is found on the main Larnaca Dhekelia road for the above purpose; (4) in the course of the exercise of his duties by the

applicant and between 0230–0245 hrs of the 22nd February, 1975, and whilst at the said road block, applicant permitted vehicle No. BQ 146, which was driven by one Andreas Panteli Siembi and carrying Turkish-Cypriots, to pass through the road block without the due inspection. This act of the applicant made the two abovementioned soldiers to react and as a result of this reaction the attempt of two other vehicles which were driven by two Turkish Cypriots to pass through the road block at the same moment was unsuccessful. The drivers of the two other vehicles were Kiamil Houssein of Pyla and Osman Mehmet of Larnaca. Both the vehicles were taken to the police station for inquiries; (5) the Divisional Police Commander of Larnaca, after being informed of these facts, gave instructions for a disciplinary investigation to be commenced against the applicant in this case. The investigation of the case was undertaken by Inspector I. Frangos. He investigated the case and on the 25th February, 1975, he reported to the Police Divisional Commander Larnaca. The Divisional Police Commander Larnaca, acting under regulation 10 of the Police (Discipline) Regulations prepared the disciplinary file and appointed Chief Superintendent X. Robalis to try the disciplinary case under regulation 14(2) of the Police (Discipline) Regulations. Chief Superintendent X. Robalis fixed the case for hearing on the 26th February, 1975, and heard evidence on the 1st March, 1975, 20th March, 1975, 21st March, 1975, and 27th March, 1975. On the 31st March, 1975, the Presiding Officer delivered his judgment and imposed a fine of £10 in respect of the first count and £5 in respect of the second count; (6) the Divisional Police Commander, Larnaca, exercising his powers under regulation 18(4) of the Police (Discipline) Regulations, reviewed the case, and having heard the applicant, altered the sentence to "requirement to resign"; (7) applicant, on the 14th April, 1975, appealed against the disciplinary case, by virtue of which he was sentenced to "requirement to resign", before the Chief of Police. The appeal was heard between the 13th November, 1975, and 29th April, 1976 by the Deputy Chief of Police who confirmed the decision of "requirement to resign".

On the 13th December, 1976, counsel for the applicant, Mr. E. Efstathiou, submitted further the following grounds of law. (a, d, f). The Disciplinary Appeal Court of the Police, ought, on the basis of the evidence before it, to have acquitted the

applicant as was decided on the same facts by the Supreme Court in the case of *Eftapsoumis and Another* v. *The Police*, (1975) 2 C.L.R. 149, having thus infringed the principle of res judicata (b, c, θ, στ). The decision of the Disciplinary Appeal Court was not warranted having regard to the evidence adduced and the circumstances of the case because the evidence accepted by it was considered as unreliable and unsafe by the Supreme Court in the case of *Eftapsoumis and Another* v. *The Police*, (1975) 2 C.L.R. p. 149 (e, n). For the reasons stated in the above paragraphs 1 & 2, the decision of the respondents to confirm the requirement of applicant to resign constitutes a contravention of the principles of natural justice and of the Constitution, because the Disciplinary Court acted contrary to the principle that in considering a case there should be examined not only the evidence adduced by the prosecution, but also the evidence and statement of the applicant and his witnesses. The Disciplinary Court of Appeal illegally considered and/or took into consideration that there exist the prerequisites and/or material establishing a disciplinary offence against the applicant, because it accepted the existence of facts as proved and/or existing, where this did not exist, and as a result thereof applicant was convicted.

On the 10th January, 1977, Mr. Koutras applied to fix a date for the hearing of the case, and the case was fixed for the 6th April, 1977. On the 2nd April, 1977, both counsel submitted a common written application for the adjournment of the hearing of the case which was fixed for the 6th April due to certain steps taken by the applicant for re-appointment and the result of which was not known until then. The case was fixed for mention on the 4th June, 1977, and it was later fixed for the 20th January, 1978 for hearing. On the 20th January, 1978, due to difficulties encountered by counsel for the Republic, the case was adjourned again and was fixed for the 5th June, 1978.

Counsel for the Republic, Mr. HjiPetrou alleged that there was no contravention of the Police Regulations and nobody acted in excess of power, but on the contrary, (a) all accepted principles of natural justice were complied with. Furthermore, he contended (b) that the facts of the disciplinary case were the same with those of the criminal case, and in view of this, the disciplinary organ was not bound by the decision of the criminal

Court; (c) with regard to the influence that the res judicata of a criminal case can exercise on a disciplinary trial, the Council of State decided that since the criminal judge who is vested with more safeguards than the disciplinary judge, accepted the existence or non-existence of certain facts, the disciplinary judge has to accept such existence regarding the objective existence of these facts without being bound to classify or not classify such facts within the meaning of the disciplinary offence. See also Conclusions from the Jurisprudence of the Greek Council of State, 1929-59 p. 364 and Greek Administrative Law by Kyriakopoullos, Vol. C, 4th edn. p. 281 where the following are stated:-

> "The rule of criminal law non bis in idem—according to which no-one is allowed to be prosecuted afresh for the same criminal act in respect of which there had already been issued a final judgment or a judgment of acquittal—does not apply at least, absolutely, in disciplinary law. So, though it was recognized, that for the same disciplinary offence it is neither permissible to prosecute one for the second time, nor to impose a punishment for the second time by the same organ, but if the hierarchically superior organ considers that the sentence imposed is insufficient, it is entitled to impose another disciplinary punishment.
>
> The pendency of the criminal charge does not prevent the disciplinary prosecution which is an independent one; the disciplinary trial is self-contained, and independent of any other trial (Art. 138 paragraph 1); and it is mainly meant the criminal and not the civil. The criminal conviction therefore does not prevent the subsequent imposition of disciplinary punishment for the same act. But if there had preceded a final judgment of the criminal court concerning the same act for which there is taking place a disciplinary prosecution, the facts whose existence or non-existence has been ascertained by the criminal case, have to be accepted by the Disciplinary Organ as ascertained in the criminal trial. (Art. 138 para. 3(a)). This is an act of ascertainment (see above paragraph 20, 4, b). Consequently, the officer who has been convicted by the criminal Court cannot be considered by the disciplinary judge that he has not committed the same act; but even in the contrary case, the officer who has been acquitted by the criminal

charge for the act attributed to him, he cannot be considered as guilty of it by the disciplinary judge. So there is safeguarded unity in the administration of justice".

It would have been useful to add that in the disciplinary appeal the Deputy Chief of Police, Pavlos Z. Stokkos in his judgment states the following:-

"I find that the reasons of acquittal of the accused by the Supreme Court in respect of the criminal offences do not exist in the present case.

The allegations of the witnesses for the prosecution in the criminal case about ill-treatment and psychological pressure and threats of exposure etc. do not exist in the present case because none of the witnesses for the prosecution of the present disciplinary case has made such an allegation, besides Osman Mehmet of Anglisides, who alleged that he was ill-treated, but there was no proof that he was in fact ill-treated. In any case, this witness was declared as hostile by the prosecution and in my judgment I will not take into consideration his evidence.

I find that there is no reason to interfere with the decision of the Disciplinary Court below regarding its findings as to the credibility of the witnesses for the prosecution. In its decision, the Disciplinary Court below states that it believed the witnesses for the prosecution. It is natural that as it has convicted the accused, this means that it did not believe their evidence.

The defence submitted that the Supreme Court has not accepted the evidence of prosecution witnesses, soldiers Antonis Pamboulou and Anastassios HjiTofi. But nowhere in the decision of the Supreme Court there appears such a thing. On the contrary, these witnesses were believed also by the Criminal Court which tried the case in the first instance.

I find that the decision of the Disciplinary Court below was in all respects reasonable and warranted in view of the evidence adduced.

The grounds of appeal do not stand and for these reasons

the appeal is dismissed and by virtue of the powers vested in me by regulation 21(c) of the Police (Discipline) Regulations, I confirm the conviction and sentence as same was reviewed by the District Court of Larnaca".

There is no doubt that in the course of the hearing, the competent Courts which took cognizance of the cases, acquitted and discharged the two accused (unfortunately one of them named Andreas Stylianou Eftapsoumis has in the meantime passed away). Though, I repeat, in the disciplinary case against Mithillos the defence complains that the Police Authority of the Republic acted unlawfully and in a way amounting to abuse or excess of power, and whilst the facts of the disciplinary cases against the applicant are the same and constitute the statement of facts in disciplinary cases against him in respect of which applicant was tried by the competent court and was acquitted, nevertheless, though such a course should have constituted a res judicata it was not taken into consideration at all in respect of these cases, and the Deputy Chief of Police acting on appeal confirmed the decisions of the Disciplinary Court below and dismissed the applicant from his work.

It would have been useful to add that on appeal before the Supreme Court, the Supreme Court acquitted the applicant in respect of all counts except one for which he ordered a re-trial. Further they were tried also by Mr. Pikis, President District Court, Larnaca, and they were acquitted and there was no appeal against the acquittal. It would have been an omission not to state that as a result, in all the charges against him which were based on the same facts the same facts related to the disciplinary cases against him. The President of the Supreme Court, Mr. Justice Triantafyllides, delivering the Judgment of the Supreme Court in the case *Andreas Stylianou Eftapsoumi and Costas Gavriel Mithillos* v. *The Police*, (1975) 2 C.L.R. 149, observed the following at pp. 156, 157, 158:-

"As the trial Judge has wrongly treated what he found to be false testimony of the appellants as amounting to corroboration of the evidence against them of the accomplice Siempis (see *Voumiotis* v. *The Republic*, reported in this Part at p. 34, at p. 50 et seq.) and as the evidence of Siempis and of the aforesaid other prosecution witness, even if technically in law admissible in evidence, could

not be safely relied on, because they had been illtreated by the police before making to them statements implicating the appellants, we have reached the conclusion that, in the interests of the proper administration of justice, we have to set aside the convictions on counts 4 and 14.....

We might not have been prepared to interfere, on appeal, with the decision of the trial judge to act on the uncorroborated evidence of this accomplice, had it not been for the fact that, in evaluating his evidence, the judge was obviously influenced in believing him—(as can be derived from his judgment)—by the consideration that the credibility of the appellants had, in his opinion, been demolished, for reasons which, as he put it, were to be stated by him later on in his judgment; and the main such reasons appear to be the reasons for which he disbelieved the appellants when comparing their evidence with that of the aforementioned prosecution witness Siempis; in this connection the trial judge observed that the credibility of the appellants was inextricably related to the credibility of Siempis.

Having already held that it was not safe for the trial judge to treat the evidence of witness Siempis as reliable, we are bound to reach the conclusion that a fundamental consideration which did influence the trial judge in deciding to act on the uncorroborated evidence of the accomplice Mikis, and convict the appellants on count 3, was an erroneous one. As we cannot and should not speculate as to whether or not, had he not been influenced as above, the trial judge would still have treated the uncorroborated evidence of the accomplice Mikis as reliable—and we express no opinion at all in this respect as to what he could or should have done—we do not think that we can uphold the conviction of the appellants on count 3".

In view of the above, it is clear that the sole question of law on which the Court is called upon to decide is whether upon the acquittal by the Criminal Court of the Public Officer, the Disciplinary Court is prevented from punishing him disciplinarily in respect of the same charges.

A summary of the case law of the Greek Council of State on this subject may be found at p. 364 of the Conclusions from

the Jurisprudence of the Greek Council of State, 1959 which runs as follows:

"Regarding the influence exercised on the disciplinary trial by the res judicata of criminal decisions, the Council of State has decided that since the criminal Judge who is vested with more safeguards than the disciplinary judge accepted the existence or non-existence of certain facts, a disciplinary judge has to accept such decision regarding the objective existence of these facts without however being bound to classify or not such facts within the notion of the disciplinary offence: 125 (29), 1066 (37), 2388 (53), 1654 (57). (These constitute by now positive law as well under s.138 paragraph 3 of the Officers Code). As a result of this, not simply the discharge but the acquittal by the criminal judge does not exclude the disciplinary prosecution in respect of the disciplinary offence based on the same facts, the disciplinary judge making his own assessment of the evidence: 876 (37), 1337 (54), 1381 (54). And the acquittal of an officer by a criminal court, due to doubts, does not constitute res judicata nor is it deemed a legal impediment for the imposition of a disciplinary punishment: 488 (31), 876 (37), 2046 (1950). And in any case, it is not contravened by a disciplinary conviction the res judicata emanating from an acquittal since it does not decide categorically about the existence or non-existence of certain facts: 2642 (54) nor is there impeded from such a decision the different assessment by the disciplinary judge of the evidence adduced: 1642 (53)."

From the above extract there emerge clearly, amongst others, the following principles: that the criminal judge is vested with more safeguards than the disciplinary judge; (2) when the criminal judge accepts the existence or non-existence of certain facts, the disciplinary judge has to accept such decision regarding the objective existence of these facts; (3) though the disciplinary judge has to accept the decision of the criminal judge regarding the objective existence of certain facts he is not bound to classify or not these facts within the notion of the disciplinary offence; (4) not merely the discharge but the acquittal by the criminal judge does not exclude the disciplinary prosecution in respect of the offence based on the same facts;

(5) the disciplinary judge can make his own assessment of the evidence; (6) acquittal due to doubts does not constitute a res judicata and is not considered as a legal impediment for the imposition of punishment.

Therefore, on the basis of the above principles, it can be said that the influence which is exercised on the disciplinary trial by the res judicata of a criminal case depends to a great extent on the reasons on which the judgment of acquittal of the criminal court was founded.

As it emerges from the above extract of the judgment of the Supreme Court, the Supreme Court decided that the criminal court could not safely rely on the evidence on which it based the conviction because, inter alia, the prosecution witnesses were ill-treated by police organs before making statements implicating the accused; and the Supreme Court arrived at the conclusion that it would have been in the interest of the proper administration of justice if the conviction was set aside.

And since in the instant case there does not arise a question of assessment of the evidence adduced according to principle 5 above; and since the disciplinary conviction was founded on the same evidence as the criminal; and since the Supreme Court which is vested with more safeguards than the disciplinary court and which also under the Constitution is vested with exclusive jurisdiction to decide finally and conclusively on every criminal appeal from any criminal court, has decided as above mentioned, in my opinion, the safe conclusion can be drawn that the decision of the Supreme Court amounts to a non-existence of the facts on which the conviction of the Criminal Court was founded and so the Disciplinary Judge ought, in accordance with principle 2 above, to accept the decision of the Supreme Court. Therefore, the sub judice decision of the disciplinary court is contrary to law within the meaning of Article 146.1 of the Constitution and as made in excess and abuse of power and is declared null and void accordingly.

But there is another reason for which the sub judice decision must be annulled. For sustaining the rule of law the constitutional draftsman has appointed the Supreme Court as the trustee of the fundamental rights and freedoms of the subject.

And the Supreme Court is, therefore, not simply a criminal court, but the most credible authentic and valid, and at the same time final arbiter of all situations relating to these rights; and since on the evidence on the basis of which the citizen was deprived of his liberty, which is safeguarded by Article 11 of the Constitution, the Supreme Court has decided as above, I am of opinion, on the basis of the principle of certainty of the law and justice which is an essential feature of the rule of law (see my judgment in the case *Pavlides* v. *The Republic* (1967) 3 C.L.R. 217 at p. 230) that the citizen was entitled to expect from the disciplinary organ respect for the decision of the Supreme Court of the State.

For all the reasons I have mentioned, and in the light of the authorities I have stated, I declare the sub judice decision or act null and void and devoid of any effect.

Sub judice decision annulled