1982 December 9

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEFKIOS I. IOANNIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF INTERIOR,

Respondent.

(Case No. 95/79).

Administrative Law—Administrative acts or decisions—Retrospectivity—Rule against retrospectivity—Decision No. 17341 of the Council of Ministers, taken by virtue of the proviso to section 5(1)(b) of the National Guard Laws, has no retrospective effect.

National Guard—Release from—Due to special circumstances—Falls for consideration by Advisory Committee contemplated by section 4(4) of the National Guard Laws—Respondent Minister refusing application for release, due to special circumstances, by relying on advice of the Commander of the National Guard who was not the appropriate organ to advise Minister on such issue—Appropriate organ the said Advisory Committee—Respondent Minister acting in a wrong way and not following the proper procedure—Sub judice decision annulled.

The applicant, a citizen of the Republic, was in 1973 and on his application granted by the respondent Minister a certificate of exemption from service in the National Guard under the provisions of section 4(3)(c) of the National Guard Laws as a person residing outside Cyprus. He returned to Cyprus in 1978 and enlisted in the National Guard, the period of his military service being twelve months. Following a decision* of the Council of Ministers, which was taken on the 19th Octo-

* This decision is quoted at p. 173 post.

ber, 1978, for the abridgement to six months of the period of military service of those conscripts who had settled abroad prior to the 14th July, 1974 provided that they return to Cyprus and enlist until the enlistment of January, 1980, applicant
5 applied* to be released from the National Guard by virtue of this decision and by virtue of special circumstances. The respondent Minister, acting on a report** of the Commander of the National Guard rejected the application and hence this recourse:

10 *Held,* (1) that it is one of the accepted principles of administrative law that an administrative decision does not have retrospective effect; that the contents of the above decision are clear and leave no room for construction that they indicate an intention to give retrospective effect to the decision; that, there-
15 fore, the Minister of Interior and Defence in refusing applicant's application for his release on the ground that the said decision of the Council of Ministers could not be given retrospective effect did not act contrary to the letter and spirit of such decision.

20 (2) That cases whereby release from the National Guard is claimed for special reasons fall for consideration within the functions of the Advisory Committee contemplated by section 4(4) of the National Guard Laws (see section 2(d) of Law 33/76 amending s.4(4) of the National Guard Laws); that in this case
25 the respondent Minister adopted the opinion of the Commander of the National Guard that no special reasons existed in the present case for the release of the applicant; that the Commander of the National Guard was not the appropriate organ to advise the Minister on such issue and his opinion should not
30 have guided the Minister in taking his decision; that the case of the applicant was a case properly falling within the ambit of the advisory committee and it was the duty of the Minister to have sent such case for consideration and inquiry as to the facts to the Advisory Committee, and wait for the conclusions
35 of such Committee before taking his decision; that, in the result, the way the Minister of Interior and Defence acted in taking the sub judice decision was wrong and that the proper procedure which ought to have been followed was not followed

* The application is quoted at pp. 174–175 post.

** The report is quoted at pp. 175–177 post.

in the present case; and that, therefore, the recourse will succeed on this ground.

Sub judice decision annulled.

Recourse.

Recourse against the decision of the respondent not to release the applicant from the National Guard. 5

L.N. Clerides, for the applicant.

Cl. Antoniades, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult. 10

SAVVIDES J. read the following judgment. The applicant is a Chartered Accountant, married, with one infant child, and he is a citizen of the Republic. He was born on 25.11.1941 at Kyperounta village and had lived in Cyprus continuously until 1961 when he left for abroad and since then he had been 15 residing and working abroad as follows:

From 1961–1969 in the United Kingdom.
From 1970–1971 in Ghana.
From 1971–1972 in Nigeria.
From 1972–1974 in Liberia. 20
From 1974–1975 in Saudi Arabia.
From 1976–1978 in the Arabian Emirates

and finally returned to Cyprus on 2.4.1978 with the intention of staying here and carrying on his profession as Chartered Accountant. 25

As a citizen of the Republic he was bound to enlist in the National Guard and serve his military service under the provisions of the National Guard Laws 1964–1979 (Laws 20/64 to 88/79). In 1973, on his application, he was granted by the Minister of Interior a certificate of exemption from 30 service in the National Guard under the provisions of section 4, sub-section 3(c) of the National Guard Laws as a person permanently residing outside Cyprus. There was a condition included in the said exemption that in case the reason for which the exemption was granted ceased to exist, the applicant was 35 bound to call for enlistment in the National Guard.

After his return to Cyprus in 1978 and in view of the fact that the reason for his exemption from service in the National

Guard ceased to exist, he enlisted in the National Guard on 11.7.1978 for his military service which, having regard to the date of his birth and the regulations in force at the time when his age-group was originally called, was a period of twelve 5 months.

The Council of Ministers for the purpose of encouraging citizens of the Republic who were exempted from military service due to their residence abroad, to return and reside in Cyprus, if they so wished, decided on 19th October, 1978 10 by Decision No. 17341 published in part I of Supplement 4 of the Cyprus Gazette of 27.10.1978 to abridge to six months the period of National Service which such citizens were bound to serve, provided they complied with the conditions set out in such decision. The material part of such decision reads 15 as follows:

> "Τὸ Συμβούλιον, δυνάμει τῆς ἐπιφυλάξεως (β) τοῦ ἐδαφίου (1) τοῦ ἄρθρου 5 τῶν περί τῆς 'Εθνικῆς Φρουρᾶς Νόμων τοῦ 1964 ἕως 1978, συντέμνει–
>
> (α) τὴν περίοδον θητείας εἰς ἓξ μῆνας τῶν στρατευσίμων 20 τῆς κλάσεως 1974 καὶ πάσης προηγουμένης κληθείσης κλάσεως οἵτινες κατὰ τὴν κρίσιν τοῦ 'Υπουργοῦ 'Αμύνης εἶχον ἐγκατασταθῆ εἰς τὸ ἐξωτερικὸν πρὸ τῆς 14ης 'Ιουλίου, 1974, νοουμένου ὅτι ἐπανέρχονται εἰς Κύπρον καὶ κατατάσσονται εἰς τὴν Δύναμιν μέχρι τῆς κατατά- 25 ξεως τοῦ 'Ιανουαρίου, 1980, συμπεριλαμβανομένης:
>
> ... ..."
>
> ("The Council of Ministers by virtue of proviso (b) of sub-section (1) of section 5 of the National Guard Laws, 1964–1978, abridges—
>
> (a) the period of service to six months of the conscripts 30 of the 1974 class and every previously called up class who at the discretion of the Minister of Defence had settled abroad before the 14th July, 1974, provided that they will return to Cyprus and enlist in the Force until the January, 1980 enlistment, inclusive").
>
> ... ...".

35 The applicant on 27.12.1978 whilst serving his national service, submitted an application to the Minister of Interior and Defence,

through the Commander of the National Guard, for the abridgement of his national service to six months. The grounds on which he based his application were—(a) the decision of the Council of Ministers No. 17341 to which reference has already been made, and (b) special circumstances under section 9, sub-section (1) of the National Guard Laws. The contents of such application which is Appendix 'B' to the Opposition) read as follows:

"I should be grateful if you would release me from the National Guard on the grounds of

(a) Paragraph (a) Council of Ministers decision number 17341 dated 29.10.1978 and/or,

(b) Special circumstances.

The position is as follows:

From October 1961 to April 1978 I was resident abroad. During this time, I obtained the following professional qualifications:-

i) Institute of Chartered Accountants

ii) Association of Certified Accountants

iii) Institute of Taxation

iv) British Institute of Management

and worked in the United Kingdom, West Africa, Lebanon, Saudi Arabia and the United Arab Emirates, with Coopers & Lybrand, Chartered Accountants, initially as an audit supervisor and later as a partner.

I returned to Cyprus in April, 1978 and have joined the National Guard in July, 1978.

I am married with one child and my wife is expecting a second child in April, 1979. We are living in rented accommodation and pay rent at the rate of £720 per annum.

Since 1974 I have been providing financial support for my brother who is studying at Manchester University. Such support amounted to £2,000 in the academic year 1977/78.

My savings are exhausted and I am now living on a

bank overdraft. My monthly expenses (including the support to my brother) amounts to £350 compared to a monthly income from the National Guard of £19.–.

5 My wife is a refugee from Morphou and has no financial means of her own.

With such financial commitments and family responsibilities, I feel that there are special circumstances which warrant my immediate release from the National Guard and sincerely hope that you would kindly consider my application favourably.

I enclose photocopies of the certificate of exemption from the National Guard and extract from my passport confirming the date of my arrival in Cyprus. I shall be happy to supply you with further information or explanations you may require".

Such application was submitted by the Commander of the National Guard to the Minister of Interior and Defence on 27th January, 1979 with an accompanying letter whereby, after briefly referring to the facts, he went on to express the following opinion why the application should be dismissed.

"Θέμα: 'Απολύσεις Στρατιωτικοῦ Προσωπικοῦ

1. ————————————————

2. 'Επί τοῦ ὡς ἄνω αἰτήματος αἱ ἀπόψεις τοῦ ΓΕΕΦ ἔχουν ὡς ἀκολούθως:

(α) 'Υπαγωγὴ εἰς τὰς διατάξεις τῆς ὑπ' ἀριθ. 17341/78 'Αποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου:

(1) 'Εκ τῶν διατάξεων τοῦ ἐδαφίου (α) τῆς ἐν λόγῳ 'Αποφάσεως προκύπτει ὅτι αὗται ἀφοροῦν εἰς ὅσους 'ἐπανέρχονται εἰς Κύπρον' καί οὐχί εἰς τοὺς ἤδη ἐπανελθόντες.

(2) 'Η 'Απόφασις αὕτη ἐδημοσιεύθη εἰς τὴν 'Επίσημον 'Εφημερίδα τῆς Δημοκρατίας τὴν 27.10.1978, ἀφ' ἧς καί ἄρχεται ἡ ἰσχύς της.

(β) Κατόπιν τῶν ἀνωτέρω φρονοῦμεν ὅτι δὲν εἶναι δυνατὴ ἡ ἀπόλυσις τούτου διὰ συντμήσεως τῆς θητείας του εἰς 6 μῆνας συμφώνως πρὸς τὰς διατάξεις τοῦ (β) σχετικοῦ, καθ' ὅσον ἐπανῆλθεν εἰς Κύπρον πρὸ τῆς 27.10.1978.

(γ) Ὑπαγωγὴ εἰς τὰς διατάξεις τοῦ ἄρθρου 9(1) τοῦ Νόμου περὶ ΕΦ, λόγω εἰδικῶν περιστάσεων:

(1) Οὗτος τυγχάνει ἔγγαμος μετ' ἀνηλίκου τέκνου καὶ ἐπὶ πλέον ἔχει ἀδελφὸν φοιτητὴν εἰς Ἀγγλίαν τοῦ ὁποίου αἱ σπουδαί, ὡς ἰσχυρίζεται, ἐπιβαρύνουν τὸν ἴδιον. 5

(2) Ἐκ τῆς ἀπὸ 26.1.1979 συνημμένης ὑπευθύνου δηλώσεως του προκύπτει ὅτι ἔχει 10 μελῆ πατρικὴν οἰκογένειαν τῆς ὁποίας τὰ μέλη (πλὴν τριῶν) ἐργάζονται μὲ ἱκανοποιητικὰς ἐτησίας ἀποδοχάς, εἰς τρόπον ὥστε νὰ παρέχουν οἰκονομικὴν βοήθειαν εἰς τὴν σύζυγόν του καθ' ὃν 10 χρόνον οὗτος ὑπηρετεῖ ὡς Στρατιώτης εἰς τὴν Ἐθνικὴν Φρουρὰν καὶ νὰ ἀναλάβουν τὴν συντήρησιν τοῦ εἰς τὴν Ἀγγλίαν σπουδάζοντος ἀδελφοῦ του.

(3) Οὗτος ὡς πτυχιοῦχος ἀνωτάτης σχολῆς καὶ ἀνήκων εἰς τὴν κλάσιν 1959 ὑπέχει 12/μηνον θητείαν, τὴν ὁποίαν 15 συμπληροῖ τὴν 11.7.1979, καθ' ἣν καὶ ἀπολύεται.

(δ) Κατόπιν τῶν ἀνωτέρω φρονοῦμεν ὅτι ἡ περίπτωσις του δὲν εἶναι ἐξαιρετικὴ οἱ δὲ λόγοι τοὺς ὁποίους ἐπικαλεῖται δὲν συνιστοῦν εἰδικὰς περιστάσεις.

(3) Οὗτος ἔχει ὑπόλοιπον θητείας περίπου 5 μηνῶν. 20

Ἄντγος Ἰωάννης Κομνηνός,
Ἀρχηγός".

("Subject: *Release of Military Personnel.*

1. ....

2. On the above claim the view of ΓΕΕΦ are as follows:

(a) *Classification under the provisions of decision No.* 25 17341/78 *of the Council of Ministers:*

(1) From the provisions of sub-section (a) of the said decision it appears that they refer to those 'who return to Cyprus' and not to those who have already returned.

(2) This decision was published in the Official Gazette 30 of the Republic on the 27.10.1978, from which date it comes into force.

(b) In view of the above we are of the view that his release is not possible by the abridgement of his service to six

months in accordance with the provisions of the (b) relevant since he had returned to Cyprus prior to 27.10.1978.

(c) *Classification under the provisions of section* 9(1) *of the National Guard Law, due to special circumstances:*

5 (1) He is married with a minor child and in addition he has a brother studying in England whose studies, as he alleges, burden him.

(2) From his attached responsible statement of the 26.1.1979 it emerges that his father's family consists of ten members, 10 whose members (except three) are working with satisfactory annual emoluments, in such a way as to render financial aid to his wife for so long as he serves as a soldier in the National Guard and to undertake the maintenance of his brother who is studying in England.

15 (3) He, as the holder of a diploma of a higher School and being of the 1959 Class is liable to 12 months' service, which he completes on 11.7.1979 and on which day he is released.

(d) In view of the above we are of the view that his case 20 is not exceptional and the reasons which he invokes do not constitute special circumstances.

3. He has about 5 months more service.

Lieutenant-General Ioannis Komninos
Commander").

25 The Minister of Interior and Defence after considering the contents of the application and the recommendations of the Commander of the National Guard, decided to adopt such recommendations and as a result, he dismissed the application and he recorded his decision briefly on the letter of the Comman-30 der of the National Guard with the word "'Απορρίπτεται" (it is dismissed) followed by his signature. The decision of the Minister of Interior and Defence was communicated to the applicant by letter dated 7.2.1979 (exhibit 1) signed by the Director-General of the Ministry of Defence which reads as 35 follows:

"I have been instructed to refer to your letter dated 27th February, 1978, whereby you apply for your release from

the National Guard for the reasons you have stated in the aforesaid letter, and wish to inform you that your application has been examined carefully, but it has not become possible to grant same".

As a result the applicant filed the present recourse, whereby he prays for, "a declaration that the act and/or decision of the Respondent not to release the applicant from the National Guard which was communicated to the applicant by letter dated 7.2.1979, should be declared null and void and of no effect whatsoever". 5 10

The application is based on the following grounds of Law:

(a) The applicant alleges that on the basis of the decision of the Council of Ministers No. 17341 of the 19th October, 1978, the respondent should have ordered the immediate release of the applicant from the National Guard as he had been residing abroad prior to the 14th July, 1974 and he returned to Cyprus and enlisted in the National Guard prior to January, 1980—that is, in July, 1978—and he served for more than six months. 15

(b) It is contended that the respondent's decision is contrary to the letter and spirit of the decison of the Council of Ministers specified in paragraph (a) above and that it should be declared null and void and of no effect whatsoever. 20

(c) As regards the part of applicant's application for release from the National Guard on the ground of special reasons, it is contended that the respondent's decision to reject it is illegal, in that it was taken contrary to section 4(4) of the National Guard Laws as the respondent did not send the applicant's case for examination to the Board set up under the said Law. 25

(d) In any case, the decision contravenes Article 29 of the Constitution, in that it is not duly reasoned and, as such it should be set aside. 30

Counsel for respondents in support of his opposition, advanced the following grounds of law:

(a) The sub judice decision was correctly taken in the lawful exercise of the respondents of their discretionary powers and on the basis of all material facts of the case. 35

(b) The sub judice decision does not in any way contravene the provisions of Article 29 of the Constitution.

By the time this recourse came up for hearing, the applicant had completed his National Service of twelve months, but counsel on his behalf stated that the reason he was pursuing this recourse was that if the applicant succeeds, then it was a matter of claiming damages for the illegal act of the respondents in not releasing him in compliance with the decision of the Council of Ministers.

In arguing legal grounds (a) and (b), counsel for applicant submitted that the applicant was entitled to be released from the National Guard after six months of service in view of the decision of the Council of Ministers No. 17341 of the 19th October, 1978 and that the Minister of Interior and Defence by refusing applicant's application for his release, acted contrary to the letter and spirit of the decision of the Council of Ministers. The applicant, counsel argued, was permanently residing abroad before the 14th July, 1974. Therefore, had he came to Cyprus after such decision of the Council of Ministers was taken, he would have been entitled to the benefit of satisfying his military obligation by serving only for six months. He contended that the decision should be given retrospective effect, because it is worded in such a way as to cover any person who was resident abroad permanently and who enlisted in the National Guard before January, 1980. The meaning of the words used in the decision of the Council of Ministers, should be taken as allowing all this period, whether before the decision or after the decision, in favour of such persons, provided they enlisted up to January, 1980. In his submission, there was a glaring mistake in the interpretation of the decision because in his opinion it makes no difference whether one enlisted before the decision was taken or after such decision, provided he enlisted within the time fixed by the decision.

In support of his third legal ground, counsel for applicant submitted that the Minister of Interior and Defence, by adopting the opinion of the Commander of the National Guard who had no locus standi in the case and deciding to dismiss applicant's application by acting on such opinion, the Minister acted ultra vires the National Guard Laws. Counsel contended

that under section 4, sub-section (4) of the National Guard Laws, in cases of applications for exemption from service in the National Guard for special reasons, the Minister has to send the case for consideration to a Standing Committee before a final decision is taken on the matter. Such course was not followed in the present case and, therefore, the sub judice decision was wrong.

Finally, counsel for applicant submitted that the reply of the Minister which is embodied in the letter sent to the applicant, copy of which was attached to the application, is lacking of any reasoning.

Counsel for the respondent submitted that the decision of the Council of Ministers was taken after applicant had returned to Cyprus and had enlisted in the National Guard and such decision could not have retrospective effect. He contended that the Minister of Interior and Defence had to give effect to decisions of the Council of Ministers as from the day of their publication in the official Gazette and had to interpret it in accordance with its contents which, in the present case, extended only to persons who, as a result of such decision, would have decided to come to Cyprus and serve in the National Guard. He submitted that under the accepted principles of administrative law, an administrative decision cannot have retrospective effect.

In dealing with legal ground 3, counsel contended that the provisions of section 4, sub-section (4) do not come into play in the present case, as the case of the applicant does not fall within any of the exemptions enumerated under section 4.

Finally, on the question of reasoning, he submitted that in the light of the material contained in the file of the case which was produced as exhibit 5, and the other material before the Court, there is sufficient reasoning of the decision of the Council of Ministers.

I shall deal first with contentions (a) and (b) of counsel for applicant.

It is one of the accepted principles of administrative law that an administrative decision does not have retrospective

effect. Under the Greek Administrative Law and the decisions of the Greek Council of State, the rule against retrospectivity of administrative decisions is well settled. In Kyriacopoulos Greek Administrative Law, 4th Edition, Vol.
5 B at p. 400, we read:

Κατ' ἀρχὴν ἡ ἀτομικὴ διοικητικὴ πρᾶξις δὲν δύναται νὰ ἰσχύσῃ ἀναδρομικῶς. Καὶ τοῦτο ἀφ' ἑνὸς μὲν διότι εἶναι ἀβέβαιον ἂν κατὰ τὸν χρόνον, εἰς ὃν ἀνέδραμεν ἡ πρᾶξις, ἴσχυεν ἡ αὐτὴ ἁρμοδιότης καὶ ἡ αὐτὴ διαδικασία· ἀφ' ἑτέρου
10 δὲ διότι ἡ ἁρμοδιότης τῶν διοικητικῶν ὀργάνων δέον ν' ἀσκῆται ἐν ὄψει τῆς παρούσης ἑκάστοτε νομικῆς καὶ πραγματικῆς καταστάσεως. Κατὰ κανόνα, τὰ ἔννομα ἀποτελέσματα τῆς πράξεως δὲν δύνανται νὰ ἐκταθῶσιν εἰς χρόνον προγενέστερον τῆς ἐκδόσεως αὐτῆς".

15 ("In the first place, the personal administrative act can have no retrospective effect. And this because on the one hand it is uncertain if at the time to which the act retrospects the same authority and the same procedure was in force; and on the other hand because the authority
20 of administrative organs must be exercised in accordance with the existing at the time legal and factual situation. As a rule, the lawful results of the act cannot be applied to a time prior to its issue").

Certain exceptions to the rule are then set out but the present
25 case does not fall within any of such exemptions.

Also in Stassinopoulos "The Law on Administrative Acts" (Dikeon Diikitikon Praxeon) 1951 Edition at pp. 368, 369 it reads:

"Κατὰ κανόνα, ἡ διοικητικὴ πρᾶξις δέον νὰ θεωρῆται ἰσχύ-
30 ουσα διὰ τὸ μέλλον καὶ οὐχὶ διὰ τὸ παρελθόν. Ἡ ἀναδρομικὴ ἰσχὺς τῆς διοικητικῆς πράξεως ἀποτελεῖ ἐξαίρεσιν, ἥτις δὲν εἶναι πάντοτε ἐπιτετραμμένη. Καὶ ἐνταῦθα κέκτηται σημασίαν ἡ διάκρισις τῶν κανονιστικῶν ἀπὸ τῶν ἀτομικῶν πράξεων.

35 Ἡ ἀναδρομικότης ἐπὶ τῶν κανονιστικῶν πράξεων—Ἀναδρομικὴ ἰσχὺς τῶν κανονιστικῶν πράξεων εἶναι κατ' ἀρχὴν ἀσυμβίβαστος πρὸς τὴν φύσιν αὐτῶν, διότι, ἐὰν

ὁ διὰ τῆς κανονιστικῆς πράξεως τιθέμενος κανὼν ἀποκτήσῃ ἀναδρομικὴν ἰσχύν, ἀναγκαίως θέλει συμπαρασύρει τὰς ὑπὸ τὸ κράτος τοῦ προϊσχύοντος κανόνος παραχθείσας σχέσεις, τοιαύτην δὲ ἀνατροπὴν δὲν ἠθέλησεν ὁ ἐφ' οὗ ἐστηρίχθη ἡ κανονιστικὴ πρᾶξις νόμος. Διότι οὗτος, κατὰ τὰς γενικὰς ἀρχάς, στερεῖται, ἐν ἀμφιβολίᾳ, δυνάμεως ἀναδρομικῆς, καὶ ἐὰν εἶχε θελήσει τοιαύτην ἀναδρομήν, θὰ ὡπλίζετο ἐπίσης καὶ ὁ νόμος δι' ἀναδρομικῆς δυνάμεως ἢ θὰ διερρύθμιζε ρητῶς πρὸς τὴν κατεύθυνσιν ταύτην τὴν χορηγηθεῖσαν ἐξουσιοδότησι. Εἰς τὰς σκέψεις ταύτας στηρίζεται τὸ γαλλικὸν ἀξίωμα, καθ' ὃ 'on ne réglemente pas pour le passé' ".

("As a rule, the administrative act should be considered as valid for the future and not for the past. The retrospective force of the administrative act constitutes an exception, which is not always allowed. And it is here that the differentiation between regulatory and individual acts have significance.

The retrospectiveness of regulatory acts. Retrospective effect of regulatory acts is as a rule incompatible to their nature, because if the rule placed by the regulatory act acquires retrospective effect, will necessarily influence the relationship created by the pre-existing rule, and such overthrow was not intended by the law on which the regulatory act was based. Because this, as a general rule, lacks, in case of doubt, retrospective effect, and if it wished such retrospection, the law would have been armed with retrospective effect or would have regulated expressly to that direction the authorization granted. On these lines it is based the French axiom by which 'on ne réglemente pas pour le passé' ").

and at page 370 of the same book—

" 'Η ἀναδρομικότης ἐπὶ τῶν ἀτομικῶν διοικητικῶν πράξεων— *Καὶ ἐπὶ τῶν ἀτομικῶν διοικητικῶν πράξεων ἰσχύει ἐπίσης ὁ* κανών, ὅτι αὗται δὲν δύνανται νὰ ἔχωσιν ἀναδρομικὴν ἰσχύν, ἂν μὴ ὁ νόμος ἔχῃ προβλέψῃ καὶ ἐπιτρέψῃ ταύτην. Πράγματι, ἡ ἀτομικὴ διοικητικὴ πρᾶξις δὲν ἔχει κατὰ κανόνα τὴν δύναμιν, ἵνα παραγάγῃ ἐννόμους συνεπείας εἰς χρόνον

προγενέστερον τῆς τελειώσεως αὐτῆς, πρῶτον μὲν διότι δὲν εἶναι βέβαιον, ὅτι εἰς τὸν χρόνον, εἰς ὃν θέλει ἀναδράμῃ ἡ ἰσχὺς αὐτῆς, ἴσχυεν ἡ αὐτὴ ἁρμοδιότης καὶ ἡ αὐτὴ δ χ-δικασία, δεύτερον δὲ διότι ἡ ὀρθὴ καὶ σύμφωνος πρὸς τὴν
5 ἔννοιαν τοῦ νόμου ἄσκησις τῆς ἁρμοδιότητος ἀπαιτεῖ κατ' ἀρχὴν ὅπως ἡ Διοίκησις ἐφαρμόζῃ τὸν νόμον ἐν ὄψει πάντοτε τῆς παρούσης καταστάσεως καὶ οὐχὶ τῆς μελλούσης ἢ τῆς παρελθούσης".

("The retrospective effect of private administrative acts.—
10 And on the private administrative acts is valid also the *rule that they cannot have retrospective effect, if the* law has not foreseen and allowed same. In fact the private administrative act does not have as a rule the force to create legal results to a time previous to its execution,
15 firstly because it is not certain that at the time to which its effect would go back, the same authority and the same procedure was in force and secondly because the correct and according to the law exercise of the authority demands as a rule that the administration enforces the law in view
20 always of the present situation and the future or the past").

Finally, in Kyriacopoulos "Greek Administrative Law" 4th Edition, Vol. B, p. 399, it is stated:

"Κατὰ ταῦτα, ἡ διοικητικὴ πρᾶξις ἀποκτᾷ ἔννομον ἰσχὺν ἀπὸ τῆς κοινοποιήσεως αὐτῆς, εἴτε ἐπιβάλλεται εἴτε μὴ
25 ἡ δημοσίευσις τῆς πράξεως ἐν τῇ 'Ε.τ.Κ., ἢ τῆς δημοσίας γνωστοποιήσεως. 'Από τῆς ἐνάρξεως δὲ τῆς ἰσχύος τῆς πράξεως ἄρχονται, κατὰ κανόνα, καὶ τὰ ἔννομα αὐτῆς ἀποτελέσματα. 'Αλλὰ δυνατὸν εἶναι ταῦτα νὰ μετατίθενται χρονικῶς εἴτε πρὸς τὸ μέλλον, ὁσάκις προσετέθη εἰς τὴν
30 πρᾶξιν ἀναβλητικὴ αἵρεσις ἢ προθεσμία, εἴτε καὶ πρὸς τὸ παρελθὸν, ὁσάκις προσέλαβεν αὕτη ἀναδρομικὴν ἰσχύν".

("Therefore the administrative act acquires legal effect from its communication whether the publication of the act in the Gazette or its public notification is obligatory
35 or not. From the taking of effect of the act, commence, as a rule, and its legal results. But it is possible that they may be placed chronologically either to the future, when there was added to the act a postponing additional term

or time limit, or to the past when it took retrospective effect").

The contents of the decision of the Council of Ministers in the case under consideration, are clear and leave no room for construction that they indicate an intention to give retrospective effect to the decision. If such effect was intended, it could have been expressed clearly in the said decision. In the result, I find that the Minister of Interior and Defence in refusing applicant's application for his release on this ground did not act contrary to the letter and spirit of the decision of the Council of Ministers.

I come now to the next contention of counsel for applicant that the sub judice decision was wrong in that the proper procedure contemplated by section 4(4) of the National Guard Laws has not been complied with.

Section 4 of the Principal Law of 1964 establishing the National Guard (Law 20/64) provided as follows:

"4.-(1) Τηρουμένων τῶν διατάξεων τοῦ ἐδαφίου (3) ἅπαντες οἱ πολῖται τῆς Δημοκρατίας ἀπὸ τῆς 1ης Ἰανουαρίου τοῦ ἔτους καθ' ὃ συνεπλήρωσαν τὸ δέκατον ὄγδοον ἔτος τῆς ἡλικίας των μέχρι τῆς 1ης Ἰανουαρίου τοῦ ἔτους καθ' ὃ συνεπλήρωσαν τὸ πεντηκοστὸν ἔτος τῆς ἡλικίας των ὑπόκεινται εἰς τὰς διατάξεις τοῦ παρόντος Νόμου καὶ ὑπέχουν ὑποχρέωσιν ὑπηρεσίας ἐν τῇ Δυνάμει.

(2) Ἡ ὑποχρέωσις ὑπηρεσίας ἐν τῇ Δυνάμει διακρίνεται εἰς ὑποχρέωσιν θητείας καὶ ὑποχρέωσιν ἐφέδρου.

(3) Ἐξαιροῦνται τῆς ὑπὸ τοῦ ἐδαφίου (1) ὑποχρεώσεως—

(α) τηρουμένων τῶν διατάξεων τοῦ παρόντος Νόμου οἱ ὑπηρετοῦντες εἰς τὸν στρατὸν ἢ τὰς δυνάμεις ἀσφαλείας τῆς Δημοκρατίας·

(β) οἱ κληρικοί·

(γ) οἱ μονίμως ἐκτὸς τῆς Κύπρου διαμένοντες πολῖται τῆς Δημοκρατίας·

(δ) οἱ κατόπιν ἰατρικῆς ἐξετάσεως ἐπὶ τῇ βάσει τῶν διατάξεων τοῦ παρόντος Νόμου κριθέντες ὡς ἀκατάλληλοι".

("4.-(1) Subject to the provisions of sub-section (3), all citizens of the Republic shall, from the first day of January of the year in which they complete the eighteenth year of their age and until the first day of January of the year in which they complete the fiftieth year of their age, be subject to the provisions of this Law and liable to serve in the Force.

(2) The liability for service in the Force comprises liability for a term of service and liability in the reserve.

(3) There shall be exempted from the liability under sub-section (1)—

(a) subject to the provisions of this Law, persons serving in the army or the security forces of the Republic;

(b) clergymen;

(c) citizens of the Republic permanently residing outside Cyprus;

(d) persons classified, upon a medical examination under the provisions of this Law, as unfit").

By subsequent amendments of section 4(3) of the principal law certain additional categories of persons exempted from service were added (see, for example, amongst them, Laws 27/65 s. 2, 56/75 s. 2, 33/76 s. 2).

Section 4 of Law 20 of 1964 was amended by section 2 of Law 14 of 1966 by the addition of sub-section (4) which reads as follows:

"2. Τὸ ἄρθρον 4 τοῦ βασικοῦ Νόμου τροποποιεῖται διὰ τῆς ἐν αὐτῷ προσθήκης τοῦ κάτωθι ἐδαφίου:

(4) Ὁ Ὑπουργὸς ἀποφασίζει ἐπὶ παντὸς θέματος ἀναφυομένου ἐν σχέσει μὲ τὴν ἐξαίρεσιν στρατευσίμων ἐπὶ τῇ βάσει τοῦ ἐδαφίου (3).

Πρὸς τὸν σκοπὸν τοῦτον ὁ Ὑπουργὸς συνιστᾷ συμβουλευτικὴν ἐπιτροπὴν ἐκ τῶν ὑπ' αὐτοῦ διοριζομένων μελῶν καὶ προεδρευομένην ὑπὸ προσώπου ἔχοντος νομικὴν κατάρτισιν ὑποδεικνυομένου ὑπὸ τοῦ Ὑπουργοῦ

πρὸς ἐξακρίβωσιν τῶν πραγματικῶν γεγονότων ἑκάστης περιπτώσεως καὶ ὑποβολὴν πρὸς αὐτὸν τοῦ πορίσματος τῆς ὑπὸ τῆς ἐπιτροπῆς γενομένης ἐρεύνης".

("2. Section 4 of the principal law is amended by the *addition thereto of the following sub-section:* 5

(4) The Minister decides on every matter in respect of the exemption of conscripts by virtue of sub-section 3.

For this purpose the Minister constitutes an advisory committee the members of which are appointed by 10 him and presided over by a person having legal experience and indicated by the Minister for the verification of the actual facts of each case and the submission to him of the report of the investigation carried out by the committee"). 15

The duty of such Advisory Committee was as *it* appears from the context of the law to verify the facts in each case submitted to it by the Minister and advise the Minister accordingly, but only in cases falling under the provisions of section 4(3) of the National Guard Laws and not for any other cases 20 falling under other provisions of the respective laws.

The applicant in the present case does not fall within any of the categories enumerated under sub-section (3) of section 4 of Law 20/1964 or any of its subsequent amendments and no argument has been advanced to the contrary. Applicant, 25 however, seeks to rely on section 9(1) of the Law on the ground of special reasons. Such section was introduced by section 6 of Law 26 of 1965, whereby *section 9* of the *principal* Law (20/64) was amended. Section 6 of Law 26 of 1965, reads as follows: 30

"6. Τὸ ἄρθρον 9 τοῦ βασικοῦ Νόμου τροποποιεῖται ὡς ἀκολούθως:

(α) διὰ τῆς ἀντικαταστάσεως τοῦ πλαγιοτίτλου διὰ τοῦ ἀκολούθου ''Ἀπόλυσις στρατευσίμων'.

(β) διὰ τῆς προσθήκης τοῦ κάτωθι ἐδαφίου, τοῦ ὑφισταμένου μέρους τοῦ ἄρθρου ἀριθμουμένου ὡς ἐδαφίου (2): 35

(1) Τὸ 'Υπουργικὸν Συμβούλιον δι' ἀποφάσεως αὐτοῦ, δημοσιευμένης εἰς τὴν ἐπίσημον ἐφημερίδα τῆς δημοκρατίας, ἀπολύει στρατευσίμους εἴτε κατὰ κλάσιν ἢ τμῆμα αὐτῆς εἴτε κατὰ περιφερείας ἢ κατηγορίας 5 ἢ εἰς ἐξαιρετικὰς περιπτώσεις κατ' ἄτομα τῇ αἰτήσει τούτων καὶ λόγῳ εἰδικῶν περιστάσεων' ".

("6. Section 9 of the principal Law is hereby amended as follows:-

(a) by the substitution of following for the marginal title:- 10 'Discharge of servicemen'.

(b) by the addition of the following sub-section, the existing part of the section being numbered as sub-section (2):-

'(1) The Council of Ministers may, by decision 15 published in the official Gazette of the Republic, discharge servicemen either by age group or part thereof or by areas or categories or, in exceptional cases, by persons on their application and because of special circumstances' ").

20 It has been the contention of counsel for respondent that the provisions of section 4, sub-section (4) do not come into play, as such provisions are only applicable to cases falling within the provisions of sub-section (3) of section 4. Such contention might be correct in so far as the situation was till 25 the enactment of Law 33/76, whereby sub-section (4) of section 4 of the principal Law was amended by extending the functions of the advisory committee to any matter on which the Minister of Interior is empowered to decide not only under sub-section (3) of section 4 but under any provisions of the law. Such 30 amendment reads as follows (see section 2(d) of Law 33/76):

"(δ) διὰ τῆς ἐν τέλει τοῦ ἐδαφίου (4) αὐτοῦ προσθήκης τῆς ἀκολούθου ἐπιφυλάξεως, τῆς εἰς τὸ τέλος τοῦ ἐν λόγῳ ἐδαφίου τελείας ἀντικαθισταμένης διὰ δύο στιγμῶν:

'Νοεῖται ὅτι πᾶσα οὕτω συσταθεῖσα συμβουλευτικὴ 35 ἐπιτροπὴ θὰ προβαίνῃ εἰς ἐξακρίβωσιν τῶν πραγματικῶν γεγονότων ἑκάστης περιπτώσεως παραπεμπομένης εἰς αὐτὴν ὑπὸ τοῦ 'Υπουργοῦ καὶ εἰς ὑποβολὴν πρὸς αὐτὸν τοῦ πορί-

σματος τῆς ὑπ' αὐτῆς γενομένης ἐρεύνης ἐν σχέσει πρὸς πᾶν θέμα ἐπὶ τοῦ ὁποίου ὁ 'Υπουργὸς ἀποφασίζει δυνάμει οἱασδήποτε διατάξεως τοῦ παρόντος Νόμου, ἢ οἱασδήποτε ἀποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου ἐκδοθείσης ἢ ἐκδιδομένης,. ἢ οἱωνδήποτε Κανονισμῶν ἐκδοθέντων ἢ ἐκδι- 5 δομένων ἐπὶ τῇ βάσει τοῦ παρόντος Νόμου.' "

("d) by the addition at the end of sub-section (4) of the following proviso, the full stop at the end of the said sub-section being substituted by a colon:

Provided that every such constituted committee will 10 proceed to the verification of the actual facts of each case forwarded to it by the Minister and to the submission to him of the report of the investigation carried out by it in respect of every matter on which the Minister decides by virtue of any provision of this law, or any decision of 15 the Council of Ministers given or to be given, or any Regulation issued or to be issued by virtue of this law").

The effect of such amendment was that cases not specifically falling within sub-section (3) of section 4 but falling within the provisions of section 9(1) whereby release from the National 20 Guard is claimed for special reasons, as it is the case of the applicant in the present case, fall for consideration within the functions of the advisory committee contemplated by sub-section(4).

It is apparent in the present case that the Minister of Interior 25 and Defence adopted the opinion of the Commander of the National Guard that no special reasons existed in the present case for the release of the applicant. The Commander of the National Guard, however, was not the appropriate organ to advise the Minister on such issue and his opinion should not 30 have guided the Minister in taking his decision. The case of the applicant was a case properly falling within the ambit of the advisory committee and it was the duty of the Minister to have sent such case for consideration and inquiry as to the facts to the Advisory Committee, and wait for the conclusions 35 of such Committee before taking his decision. In the result, I find that the way the Minister of Interior and Defence acted in taking the sub judice decision was wrong and that the proper

procedure which ought to have been followed was not followed in the present case. The recourse, therefore, succeeds on this ground.

I find it unnecessary to deal with the last contention of counsel 5 for applicant in that the sub judice decision was not fully reasoned as I have already concluded that the decision was wrongly taken.

For all the above reasons, this recourse succeeds and the sub judice decision is hereby annulled. In the circumstances 10 I make no order for costs.

Sub judice decision annulled.
No order as to costs.