1985 March 20

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ANDREAS AVGOUSTIS,

Applicant,

v.

THE DISCIPLINARY BOARD,

Respondent.

(Case No. 85/82).

Administrative Law—Administrative acts or decisions—Annulment—They cease to exist and the legal position reverts to that which existed before the act or decision was taken or made.

Army of the Republic—Officer of—Seconded for service in the National Guard—Disciplinary trial of—National Guard (Discipline) Regulations, 1964 to 1978 could be invoked —Section 3 of the Army of the Republic (Constitution and Enlistment) Law, 1961 (Law 8/61) (as amended by section 2(3) of Law 46/73).

Administrative Law—Administrative acts or decisions—Cannot be made with retrospective effect—Disciplinary conviction of Army Officer—Retrospective sentence annulled—Regulation 25 of the National Guard (Discipline) Regulations, 1964-1978.

Disciplinary Offences—Officer of Army of the Republic seconded for service in the National Guard—Disciplinary trial—Hearing of the case and admissibility of evidence—Rules applicable are those applicable to hearings of cri-

minal cases—Regulations 17(8) and 19(1) of the National Guard (Discipline) Regulations, 1964-1978—Counts bad for duplicity—Disciplinary conviction resting, inter alia, on a report which was admitted in evidence without calling its maker as a witness—And applicant denied the right to cross-examine him—Said regulation 17(8) infringed—Such violation contrary to the rules of natural justice—Moreover respondent acted contrary to the principles of the Law of evidence by accepting an inadmissible document—Sub judice disciplinary conviction annulled.

Human rights—Freedom of expression—President of the Republic—Citizens of the Republic including army officers entitled to their views about the policy of the Head of the Republic—And they can freely express same provided they are doing so in a non insulting way.

The applicant was enlisted in the Army of the Republic on the 1st November, 1962, with the rank of Captain. On the 1st November, 1971, he was promoted to the rank of Major. As from the 2nd October, 1974, he was seconded for service in the National Guard. His secondment to the National Guard was made by the then Minister of Interior and Defence by virtue of the powers delegated to him by the Council of Ministers which was, under section 3 of the Army of the Republic (Constitution and Enlistment) Law, 1961 (Law 8/61), as amended by the Army of the Republic (Constitution, Enlistment and Discipline) (Amendment) Law, 1973 (Law 46/73), the competent organ to second officers of the Army of the Republic to the National Guard. The order by means of which he was seconded from the Army of the Republic to the National Guard, though a temporary one, has never been amended or repealed. On or about the 9th September, 1976, he was informed that the Council of Ministers had decided to terminate his services in the Army of the Republic as from the 10th September, 1976, without the payment of any compensation.

As against this decision he filed a recourse the result of which was the annulment of the said decision on the ground that the Council of Ministers had no right to dis-

miss him without having before it the opinion of the competent Military Disciplinary Board.

Several requests made by the applicant to the authorities to return to his duties and be paid the emoluments due to him since his dismissal remained unanswered and on the 4th May, 1981. on the directions of the Minister of Defence a Disciplinary Board was set up in order to try him of two disciplinary offences* alleged to have been committed by him. The Disciplinary Board found him guilty of the charges preferred against him and imposed on him the sentence of dismissal from the service retrospectively as from the 10th September, 1976. Hence this recourse which was based on the following grounds.

(a) That the respondent had no jurisdiction to try the case in that applicant had not been reinstated to the rank of Major in the National Guard.

(b) That the respondent was not a Disciplinary Board constituted by virtue of the Army of the Republic Law and the Regulations of the National Guard, by virtue of which he was tried could not have been invoked in his case.

(c) That the respondent had no right to impose a sentence with retrospective effect.

(d) That the acts for which the applicant was found guilty did not constitute disciplinary offences at the time they were committed, and, therefore, the respondent had wrongly found him guilty for committing them.

(e) That the counts with which applicant was charged were bad for duplicity.

(f) That the respondent had wrongly admitted inadmissible evidence, and

* The offences are quoted at pp. 632-634 post.

(g) That it was not reasonably open to the respondent to find the applicant guilty on the counts he was charged with.

In reaching its decision, by which the applicant was found guilty of the charges preferred against him, the Disciplinary Board took into consideration a report submitted by an Army officer, a certain Major Zambartas which report he had submitted to the Chief of the General Staff of the National Guard in June, 1976. This report was produced after an objection submitted by counsel appearing for the applicant was overruled but Major Zambartas was not called as a witness. Regulation 19(1) of the National Guard (Discipline) Regulations, 1964 to 1978 provides that:

"The rules applicable to trials before the Disciplinary Board, relating to the admissibility of evidential material, are the same as the rules which are applied by the courts in the Republic and nobody is obliged to answer to any question to which he would not have been obliged to answer or to produce a document which he would not have been obliged to produce in a Court in the Republic".

Held, (1) that it is a cardinal principle of administrative Law that when an act or decision of an administrative organ is declared null and void by a Court, such decision or act ceases to exist and the legal position reverts to that which existed before the act or decision was taken or made (see Kyriacopoulos on Greek Administrative Law, 4th ed., Vol. C, p. 151); that it follows, therefore, that after the annulment of the first sub judice decision the applicant was reinstated to the rank of a Major of the Army of the Republic seconded to serve in the National Guard with effect from the 8th September, 1976; and that the fact that his request to return to his duties remained unanswered by the authorities, has no bearing on this issue.

(2) That since applicant was reinstated to his rank in the Army of the Republic but his secondment to the National Guard continued the regulations of the National

Guard could be invoked (see section 3 * of Law 8/61 as amended by section 2(3) of Law 46/73).

(3) That is is a basic principle of administrative Law that administrative acts cannot be made with retrospective effect; that, further, under regulation 25 of the relevant Regulations "the sentences imposed by the Disciplinary Board start running from the date of their confirmation by the confirming authority"; and, that, therefore, the sub judice decision regarding the retrospectivity of the sentence imposed on the applicant should be declared null and void and of no effect.

(4) That the charges on which he was found guilty constituted a disciplinary offence at the time they were committed because they were made offences by the National Guard (Discipline) Regulations, 1964.

(5) That both counts which the applicant had faced would have been, if a criminal charge was brought against him, bad for duplicity and in the light of the provisions of regulation 17(8)** of the National Guard (Discipline) Regulations of 1964-1978 the proceedings against the applicant did not take place in accordance with them, as the applicant was denied the right to know exactly which offence he had to answer.

(6) That inadmissible evidence cannot be taken into consideration by the Disciplinary Board when it weighs the evidence before it in order to reach its decision (see regulation 19(1) of the National Guard (Discipline) Regulations, 1964-1978); that having taken into consideration that Major Zambartas was not called as a witness and that as a result the applicant was denied the right to cross-examine him, a fundamental right which, is safeguarded by regulation 17(8), has been infringed; that such violation is contrary to the rules of natural justice and as the respondent, contrary to the principles of the Law of

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* Section 3 is quoted at pp. 636-637 post.

** Regulation 17(8) provides as follows:
«The hearing of the case is conducted, as far as possible, in the same manner as the hearing of a criminal case tried summarily».

evidence, had accepted an inadmissible document, which undoubtedly had influenced it in reaching its decision, the sub judice decision must be annulled.

(7) *Held, further,* that on the evidence adduced before the Disciplinary Board, no reasonable Court could have found the applicant guilty of the charges preferred against him, as the evidence adduced before it could not possibly warrant the finding which the Disciplinary Board had reached, in that Captain *Theocharous,* a witness for the Prosecution, in giving evidence before the Board said that what he heard the applicant say to Major Zambartas was that he disagreed with the general policy of the late Archbishop Makarios; that every citizen of the Republic, including an officer of the National Guard or the Army of the Republic, is entitled to his views about the policy of the Head of the Republic and that he can freely express same provided that he is doing so in a non insulting way.

Sub judice decision annulled.

Cases referred to:

Avgousti v. *Republic* (1980) 3 C.L.R. 304;

Morsis v. *Republic* (1965) 3 C.L.R. 1 at p. 6;

Decisions of the Greek Council of State Nos: 250/49, 379/49, 263/55 and 1320/56.

Recourse.

Recourse against the decision of the respondent to dismiss applicant from the National Guard.

L. N. Clerides, for the applicant.

M. Florentzos, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. The applicant by his recourse prays for a declaration that the decision of the respondent by means of which he was dismissed from the National Guard as from the 10th September, 1976, which was communicated to him on the 23rd January, 1982, is null and void and of no effect whatsoever.

The applicant was enlisted in the Army of the Republic on the 1st November, 1962, with the rank of Captain, having served until then as a Captain in the Greek Army. On the 1st November, 1971, he was promoted to the rank of Major and on or about the 9th September, 1976, he was informed by letter dated the 8th September, 1976, that the Council of Ministers had decided to terminate his services in the Army of the Republic as from the 10th September, 1976, without the payment of any compensation.

The Council of Ministers reached its decision to dismiss the applicant on the submission of the Minister of Defence.

The applicant then filed Recourse No. 243/76, the result of which was the annulment of the said decision on the ground that the Council of Ministers had no right to dismiss the applicant without having before it the opinion of the competent Military Disciplinary Board (see, in this respect, *Avgousti* v. *The Republic*, (1980) 3 C.L.R. 304).

Several requests made by the applicant to the authorities to return to his duties and be paid the emoluments due to him since his dismissal remained unanswered and on the 4th May, 1981, on the directions of the Minister of Defence a Disciplinary Board was set up in order to try the following two disciplinary offences alleged to have been committed by the applicant:

«Πρώτη Κατηγορία

Κατηγορεῖσαι διὰ ἀναξιοπρεπῆ καὶ ἀνοίκειον συμπεριφορὰν ἤτοι ἐνήργησες κατὰ τρόπον προκαλοῦντα ἀταξίαν, ἢ/καὶ κατὰ τρόπον ἐπιβλαβῆ διὰ τὴν πειθαρχίαν, ἢ/καὶ κατὰ τρόπον ὅστις ἦτο εὔλογον καὶ πιθανὸν ὅτι θὰ προσβάλῃ τὴν ὑπόληψιν τῆς Δυνάμεως (Στρατοῦ) κατὰ παράβασιν τοῦ ΚΑΝ. 1 τῶν Πειθαρχικῶν Κανονισμῶν τῆς Ἐθνικῆς Φρουρᾶς 1964-1979.

Λεπτομέρειαι Κατηγορίας

Ὁ κατηγορούμενος περὶ τὸ τέλος Ἀπριλίου 1976 ἐντὸς τοῦ γραφείου τῆς ΔΥΠ/ΓΕΕΦ τοῦ τότε Τχου Ζαμπάρτα Ἰωάννη καὶ ἐπὶ παρουσίᾳ τούτου καὶ τοῦ τότε Λγοῦ Θεοχάρους Σάββα ἐξεφράσθη ὅτι διαφωνεῖ

μὲ τὴν πολιτικὴν τοῦ τέως Ἀρχιεπισκόπου Μακαρίου Προέδρου τῆς Κυπριακῆς Δημοκρατίας.

Δευτέρα Κατηγορία

Κατηγορεῖσαι διὰ ἀναξιοπρεπῆ καὶ ἀνοίκειον συμπεριφορὰ ἤτοι ἐνήργησες κατὰ τρόπον προκαλοῦντα ἀταξίαν, ἢ/καὶ κατὰ τρόπον ἐπιβλαβῆ διὰ τὴν πειθαρχίαν. ἢ/καὶ κατὰ τρόπον ὅστις ἦτο εὔλογον καὶ πιθανὸν ὅτι θὰ προσβάλῃ τὴν ὑπόληψιν τῆς Δυνάμεως (Στρατοῦ) κατὰ παράβασιν τοῦ ΚΑΝ. 1 τῶν Πειθαρχ. Κανον. τῆς Ε.Φ. 1964-1979.

Λεπτομέρεια Κατηγορίας

Ὁ κατηγορούμενος ἐντὸς τοῦ μηνὸς Μαΐου 1976 καὶ εἰς τὸ στρατόπεδον Παναγίδη κατεῖχεν ἀριθμὸν φυλλαδίων εἰς τὸ γραφεῖον του (10-20), ἔδωσε δὲ ἕνα ἐξ αὐτῶν εἰς τὸν Τχην Ζαμπάρταν Ἰωάννην, τὰ ἐν λόγῳ φυλλάδια περιεῖχον τὴν ὁμιλίαν τοῦ Ἀρχιεπισκόπου Μακαρίου εἰς τὸ Συμβούλιον Ἀσφαλείας τῶν Η.Ε. τὴν 19.7.74 κατὰ τοιοῦτον τρόπον τυπωμένη (μὲ ἀπομονωμένες φράσεις) ὥστε νὰ προκύπτουν αἰχμαὶ κατὰ τοῦ τέως Ἀρχιεπισκόπου Μακαρίου ὡς Ἀρχηγὸς Κράτους».

("*First Count*

You are charged for undignified and improper behaviour, namely you had acted in a manner causing disorder and/or in a harmful to discipline manner and/or in a manner which was reasonable and probable that is will offend the dignity of the Force (Army) contrary to Reg. 1 of the Disciplinary Regulations of the National Guard 1964-1979.

Particulars of Offence

Towards the end of April 1976 in the office of ΔΥΠ/ΓΕΕΦ of the then Major Zambartas Ioannis and in the presence of him and of the then Captain Theocharous Savvas the accused stated that he disagrees with the policy of the late Archbishop Makarios President of the Republic of Cyprus.

Second Count

You are charged for undignified and improper be-

haviour, namely you had acted in a manner causing disorder and/or in a harmful to discipline manner and/or in a manner which was reasonable and probable that it will offend the dignity of the Force (Army) contrary to Reg. 1 of the Disciplinary Regulations of the National Guard 1964-1979.

Particulars of Offence

In May 1976 and in the Panayides' military camp the accused had in his possession a number of pamphlets in his office (10-20), and he gave one of them to Major Zambartas Ioannis, the said pamphlets contained the speech of Archbishop Makarios at the U. N. Security Council on 19.7.74 printed in such a manner (with isolated phrases) so as points would result against the late Archbishop Makarios as Head of State.")

On the 19th October, 1981, the Disciplinary Board having heard the evidence adduced by the prosecution and having afforded to the applicant every opportunity to defend himself, and I must say here that in this respect the applicant was given all along every opportunity to exercise all the rights he could have, found him guilty of the charges preferred against him and imposed on him the sentence of dismissal from the service retrospectively as from the 10th September, 1976. In imposing this sentence the Disciplinary Board said that in their opinion such sentence was imperative in view of the special circumstances of the case but did not explain what were, in their view, such special circumstances which led them to take their decision to impose on the applicant a sentence of dismissal with retrospective effect.

Such sentence was confirmed on the 23rd January, 1982, in accordance with the provisions of the relevant Law.

The applicant now complains that the respondent had no jurisdiction to try his case in that-

(a) he had not been reinstated to the rank of Major in the National Guard,

(b) the respondent was not a Disciplinary Board constituted by virtue of the Army of the Republic Law,

(c) the respondent had no right to impose a sentence

with retrospective effect,

(d) the acts for which the applicant was found guilty did not constitute disciplinary offences at the time they were committed, and, therefore, the respondent had wrongly found him guilty for committing them,

(e) the counts with which applicant was charged were bad for duplicity,

(f) the respondent had wrongly admitted inadmissible evidence, and

(g) it was not reasonably open to the respondent to find the applicant guilty on the counts he was charged with.

The respondent, in answer to the grounds of Law relied upon by the applicant, alleges that the sub judice decision is duly reasoned and that it was correctly and legally taken in compliance with the relevant laws and regulations and after exercising its descretion in the light of all material facts and circumstances of the case.

I intend to deal with each ground of Law as set out earlier.

Ground (a)

This ground deals with the question of whether at the time of his trial by the Disciplinary Board the applicant was an officer of the National Guard.

It is an undisputed fact that the applicant was an officer of the Army of the Republic and that, as it appears from his personal file which is an exhibit before me, he was, as from the 2nd October, 1974, seconded for service in the National Guard. The secondment of the applicant to the National Guard was made by the then Minister of Interior and Defence by virtue of the powers delegated to him by the Council of Ministers which was, under section 3 of the Army of the Republic (Constitution and Enlistment) Law, 1961 (Law 8/61), as amended by the Army of the Republic (Constitution, Enlistment and Discipline) (Amendment) Law, 1973 (Law 46/73), the competent organ to second officers of the Army of the Republic to the National Guard.

The order by means of which the applicant was seconded

from the Army of the Republic to the National Guard, though a temporary one, has never been amended or repealed.

It is a cardinal principle of administrative Law that when an act or decision of an administrative organ is declared null and void by a Court such decision or act ceases to exist and the legal position reverts to that which existed before the act or decision was taken or made (see Kyriacopoulos on Greek Administrative Law, 4th ed., V. C., p. 151).

It follows, therefore, that after the annulment of the sub judice decision in the *Avgousti* case, supra, the applicant was reinstated to the rank of a Major of the Army of the Republic seconded to serve in the National Guard with effect from the 8th September, 1976. The fact that his request to return to his duties remained unanswered by the authorities, has no bearing on this issue.

Ground (b)

This ground is that the Disciplinary Board which had tried the applicant was not duly and legally constituted. The applicant alleges that since he was an officer of the Army of the Republic, the regulations of the National Guard, by virtue of which he was tried, could not have been invoked in his case.

Having found that the applicant was reinstated to his rank in the Army of the Republic, but that his secondment to the National Guard continued, this argument must fail more so because of the previsions of section 3 of Law 8/61, as amended by section 2(3) of Law 46/73. This section reads:-

"..... . . . . .

(3) Οἱονδήποτε μέλος ἀποσπώμενον δυνάμει τοῦ ἐδαφίου (2) δι' ὑπηρεσίαν ἐν τῇ Ἀστυνομικῇ Δυνάμει Κύπρου ἢ ἐν τῇ Ἐθνικῇ Φρουρᾷ, διαρκούσης τῆς τοιαύτης ἀποσπάσεως, θὰ ἐκτελῇ τοιαῦτα καθήκοντα καὶ ἀσκῇ τοιαύτας ἐξουσίας ὡς καθορίζονται εἰς τὸν περὶ Ἀστυνομίας Νόμον ἢ τοὺς περὶ τῆς Ἐθνικῆς Φρουρᾶς Νόμους τοῦ 1964 ἕως 1968 καὶ τοὺς βάσει τῶν Νόμων τούτων ἐκδιδομένους Κανονισμούς, ἀναλόγως τῆς περιπτώσεως, καὶ θὰ ὑπόκειται εἰς τὰς δια-

τάξεις τῶν προειρημένων Νόμων καὶ Κανονισμῶν.»

("Any member seconded under paragraph (2) for service in the Cyprus Police Force or in the National Guard, during such secondment, will perform such duties and exercise such powers as defined in the Police Law or the National Guard Laws 1964 to 1968 and the Regulations issued by virtue of such Laws, as the case may be, and will be subject to the provisions of the said Laws and Regulations.")

This ground, therefore, must, also, fail.

Before dealing with ground (c), I feel that I must deal with grounds (d) to (f) which, in procedural sequence, precede it.

Ground (d)

It is the submission of counsel for the applicant that the charges on which he was found guilty did not constitute a disciplinary offence at the time they were committed.

This submission must fail because the offences with which the applicant was charged were made offences by the publication of the National Guard (Discipline) Regulations, 1964 (see No. 554 in the Third Supplement, Part II, to the Official Gazette of 1964). Paragraph 1 of the First Schedule reads of follows:-

«(1) Ἀναξιοπρεπὴς καὶ ἀνοίκειος συμπεριφορά, ἤτοι ἐὰν μέλος τι ἐνεργῇ κατὰ τρόπον προκαλοῦντα ἀταξίαν, ἢ κατὰ τρόπον ἐπιβλαβῆ διὰ τὴν πειθαρχίαν, ἢ κατὰ τρόπον ὅστις εἶναι εὔλογον καὶ πιθανὸν ὅτι θὰ προσβάλῃ τὴν ὑπόληψιν τῆς Δυνάμεως.»

("Undignified and improper behaviour, namely if a member acts in a manner causing disorder, or in a manner harmful to discipline, or in a manner which is reasonable or probable that it will offend the dignity of the Force.")

Ground (e)

Counsel for the applicant argued that the two counts

which the applicant had faced were bad for duplicity in that more than one offence was charged in each one of them. He further argued that the Disciplinary Board which had tried the applicant was bound to follow the Criminal Procedure Rules which forbid the inclusion in one count of more than one offences.

Regulation 17(8) of the National Guard (Discipline) Regulations 1964 to 1978 (see No. 240 in the Third Supplement, Part I, to the Official Gazette of 1978) provides as follows:-

«Ἡ ἀκρόασις τῆς ὑποθέσεως διεξάγεται, κατὰ τὸ δυνατόν, κατὰ τὸν αὐτὸν τρόπον ὡς ἡ ἀκρόασις ποινικῆς ὑποθέσεως ἐκδικαζομένης συνοπτικῶς.»

("The hearing of the case is conducted, as far as possible, in the same manner as the hearing of a criminal case tried summarily.")

The relevant provision relating to the framing of charges against an accused person in criminal proceedings is section 39 of the Criminal Procedure Law, Cap. 155, which reads:

"39. The following provisions shall apply to all charges and, notwithstanding any Law or rule of practice, a charge shall, subject to the provisions of this Law, not be open to objection in respect of its form or contents if it is framed in accordance with the provisions of this Law-

(a) a statement of the offence in a charge, or where more than one offence is charged of each offence so charged, shall be set out in the charge in a separate paragraph called a count;

. . . . . ."

The disciplinary offence with which the applicant was charged before the Board in both counts was created, as already stated by paragraph (1) of the First Schedule to the National Guard (Discipline) Regulations 1964, supra.

It is in my opinion, clear that here we have three dis-

tinct instances which can constitute the offence of undignified and improper behaviour-

(a) by acting in a manner causing disorder,

(b) by acting in a manner harmful to discipline, and

(c) by acting in a manner which will reasonably and probably offend the dignity of the Force.

Instances (b) and (c) above are self-explanatory but I tried to find out what the word "ataxia" ("disorder") means in the military vocabulary. No definition of this word is given in either the Army of the Republic Law, or in the National Guard Law. However, Part Nine (which consists of sections 71 to 76) of the Military Criminal Code and Procedure Law, 1964 (Law 40/64) as later amended, is headed "Offences against the Military Order" and I take it that the offences created by it are the offences that can cause "disorder" in the Army.

The offences created by Part Nine of this Law are the following:

(a) Insulting a guard.

(b) Assault on a guard.

(c) Unnecessary shooting.

(d) Drunkeness whilst on duty.

(e) Pretention of uniform or other insignia.

(f) Unlawful taking over of leadership.

Each of the above instances does not merely describe the particular act complained of, i.e. undignified and improper behaviour, but each consists of a separate act which can constitute the said particular act.

In the result, I find that both counts which the applicant had faced would have been, if a criminal charge was brought against him, bad for duplicity and in the light of the provisions of regulation 17(8) of the National Guard (Discipline) Regulations of 1964 to 1978, to which I have already referred, I find that the proceedings against

the applicant did not take place in accordance with them, as the applicant was denied the right to know exactly which offence he had to answer.

I now come to grounds (f) and (g) which I find to be interconnected.

Ground (f) is that the respondent had wrongly admitted inadmissible evidence.

By ground (g) the applicant alleges that it was not reasonably open to the respondent to find him guilty.

Regulation 19(1) of the National Guard (Discipline) Regulations 1964 to 1978, provides as follows:-

> «19 (1) Οἱ τηρούμενοι εἰς δίκας ἐνώπιον τοῦ Πειθαρχικοῦ Συμβουλίου κανόνες, οἱ ἀφορῶντες εἰς τὸ παραδεκτὸν ἀποδεικτικῶν στοιχείων, εἶναι οἱ αὐτοὶ μετὰ τῶν κανόνων οἵτινες τηροῦνται ὑπὸ τῶν δικαστηρίων ἐν τῇ Δημοκρατίᾳ, οὐδεὶς δὲ ὑποχρεοῦται νὰ ἀπαντήσῃ εἰς οἱανδήποτε ἐρώτησιν εἰς ἣν δὲν θὰ ὑπεχρεοῦτο νὰ ἀπαντήσῃ, ἢ νὰ προσκομίσῃ ἔγγραφον ὅπερ δὲν θὰ ὑπεχρεοῦτο νὰ προσκομίσῃ ἔν τινι δικαστηρίῳ ἐν τῇ Δημοκρατίᾳ.»
>
> ("The rules applicable to trials before the Disciplinary Board, relating to the adminissibility of evidential material, are the same as the rules which are applied by the courts in the Republic and nobody is obliged to answer to any question to which he would not have been obliged to answer or to produce a document which he would not have been obliged to produce in a court in the Republic.")

From the above, it is abundantly clear that inadmissible evidence cannot be taken into consideration by the Disciplinary Board when it weighs the evidence before it in order to reach its decision.

It is an undisputed fact that the Disciplinary Board in reaching its decision, by which the applicant was found

guilty of the charges preferred against him, took into consideration a report submitted by an Army officer, a certain Major Zambartas, which report he had submitted to the Chief of the General Staff of the National Guard in June, 1976. This report was produced after an objection submitted by counsel appearing for the applicant was overruled.

Having taken into consideration that Major Zambartas was not called as a witness and that as a result the applicant was denied the right to cross-examine him, a fundamental right which, in my views, is safeguarded by regulation 17(8) above, has been infringed. Such violation is contrary to the rules of natural justice and as the respondent, contrary to the principles of the Law of evidence, had accepted an inadmissible document, which undoubtedly had influenced it in reaching its decision, I find that the sub judice decision must be annulled.

Before concluding, I would like to say that on the evidence adduced before the Diesciplinary Board, no reasonable Court could have found the applicant guilty of the charges preferred against him, as the evidence adduced before it could not possibly warrant the finding which the Disciplinary Board had reached, in that Captain Theocharous, a witness for the Prosecution, in giving evidence before the Board said that what he heard the applicant say to Major Zambartas was that he disagreed with the general policy of the late Archbishop Makarios. In my views, every citizen of the Republic, including an officer of the National Guard or the Army of the Republic, is entitled to his views about the policy of the Head of the Republic and that he can freely express same provided that he is doing so in a non insulting way.

The other witness for the Prosecution was G. Azinas, the Assistant Chief of Staff of the National Guard. His evidence related to the second count with which the applicant was charged i.e. the distribution of printed copies of the speech made by the late President of the Republic Archbishop Makarios at the United Nations in July 1974,

after the Coup d' Etat. This witness said that the photocopy of the speech which was shown to him whilst giving his evidence before the Board and which was produced as an exhibit, was "by sight, shape and title" similar to two copies, which were handed to him by the applicant. However, he said, he had not read the document.

In the light of the evidence of this witness I do not think that the applicant could have reasonably been found guilty of the charge described in the second count preferred against him.

I now come to the last ground of Law on which the applicant had based his application, namely whether the Board could, after finding him guilty of the counts with which he was charged, impose a sentence of dismissal retrospectively.

No reasons were given by the Board why it decided to dismiss the applicant as from the 10th September, 1976.

It is a basic principle of administrative Law that administrative acts cannot be made with retrospective effect. In this connection useful reference may be made to Kyriacopoulos on Greek Administrative Law, 4th ed., V.B., p. 400; Stassinopoulos on Law of Administrative Acts (1951), p. 370; Conclusions from the Case-Law of the Council of State in Greece, 1929-1959, p. 197, Decisions Nos. 250/1949, 379/1949, 263/1955, 1310/1956 of the Council of State in Greece and the case of *Morsis* v. *The Republic*, (1965) 3 C.L.R. 1, at p. 6.

From the above, the conclusion that can be drawn is that unless the relevant Law otherwise provides, administrative acts cannot have retrospective effect.

In the present case, from regulation 25 of the relevant Regulations it appears that "the sentences imposed by the Disciplinary Board start running from the date of their confirmation by the confirming authority".

In the result, the sub judice decision regarding the retrospectivity of the sentence imposed on the applicant should be declared null and void and of no effect.

In the right of my above findings, the sub judice decision is declared null and void and of no effect.

With regard to costs, I feel that in the circumstances of the case, each party must pay its costs.

Sub judice decision annulled. Each party to pay its costs.