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[ΔΙΚΑΕΤΑΙ: ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρόεδρος, ΣΤΑΥΡΙΝΙΔΗΣ, Λ. ΛΟ-Ι-ΖΟΥ, ΧΑΤΖΗΑΝΑΣΤΑΣΙΟΥ, ΜΑΛΑΚΤΟΣ, Δικασταί]

ΓΕΝΙΚΟΣ ΕΙΣΑΓΓΕΛΕΥΣ ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ,

Αἰτητής,

κατὰ

ΝΙΚΟΥ ΣΑΜΨΩΝ,

Καθ' οδ ή αἴτησις.

(Αἴτησις 'Αρ. 1/73).

Γενικός Εἰσαγγελεὺς τῆς Δημοκρατίας – Παράτασις θητείας αὐτοῦ μετὰ τὴν ἡμερομηνίαν καθ' ἡν συνεπληρώθη ἡ ἡλικία ἀναγκαστικῆς ἀφυπηρετήσεώς του – Ἐγένετο νομίμως – ''Αρθρον 8(4) τοῦ Περὶ Συντάξεων Νόμου (Κεφ. 311) (ὡς ἐτροποποιήθη ὑπὸ τοῦ Νόμου 9 τοῦ 1967), ἄρθρα 2 καὶ 8(4) τοῦ Περὶ Δικαστηρίων Νόμου τοῦ 1960 (Νόμος 14 τοῦ 1960) καὶ ''Αρθρα 112.4, 153.7(1) καὶ 153.11 τοῦ Συντάγματος.

Προδικαστική ἔνστασις.

Προδικαστική ἔνστασις ἐγερθεῖσα κατὰ τὴν διάρκειαν τῆς ἀκροάσεως αἰτήσεως δι' ἄρσιν, δυνάμει τῶν προνοιῶν τοῦ ἄρθρου 83 τοῦ Συντάγματος, τῆς ἀσυλίας τοῦ Μέλους τῆς Βουλῆς τῶν 'Αντιπροσώπων Νίκου Σαμψών, διὰ νὰ καταστῆ δυνατὸν νὰ διωχθῆ οὖτος ποινικῶς διὰ ὡρισμένα ἀδικήματα.

- Λ. Λουκαΐδης, 'Ανώτερος Δικηγόρος τῆς Δημοκρατίας, καὶ Μ. Φλουρέντζος, διὰ τὸν Αἰτητήν.
- Λ. Κληρίδης, Α. Χατζηϊωάννου, Α. Νεοκλέους, Τ. 'Ηλιάδης,
 Γ. 'Αριστείδου, Π. Δημητρίου καὶ ΄ Δ. Σαμψών, διὰ τὸν καθ' οὖ ἡ αἴτησις.

Τὰ πραγματικὰ περιστατικὰ τῆς ἐνστάσεως ἐκτίθενται ἀρκούντως εἰς τὴν ἀπόφασιν* τοῦ ἀνωτάτου Δικαστηρίου διὰ τῆς ὁποίας ἀπερρίφθη αὖτη.

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, ΠΡ.: Κατά τὴν διάρκειαν τῆς ἀκροάσεως τῆς παρούσης αἰτήσεως δι' ἄρσιν, δυνάμει τῶν προνοιῶν τοῦ

^{*} An English translation of this decision appears at pp. 95—98 post.

Σημείωσις: Ἡ αἴτησις περὶ ἄρσεως τῆς ἀσυλίας ἀπεσύρθη πρὸ τῆς ἐκδόσεως τῆς ἐπιφυλαχθείσης ἀποφάσεως τοῦ Δικαστηρίου.

άρθρου 83 τοῦ Συντάγματος, τῆς ἀσυλίας τοῦ Μέλους τῆς Βουλῆς τῶν ᾿Αντιπροσώπων Νίκου Σαμψών, διὰ νὰ καταστῆ δυνατὸν νὰ διωχθῆ οὖτος διὰ τὰ ἀδικήματα τὰ ἀναφερόμενα εἰς τὸ κατηγορητήριον τὸ ὁποῖον ἔχει ἐπισυναφθῆ εἰς τὴν αἴτησιν, ὁ συνήγορος τοῦ καθ΄ οὖ ἡ αἴτησις ῆγειρεν ἔνστασιν ὅτι ὁ Γενικὸς Εἰσαγγελεὺς τῆς Δημοκρατίας, κ. Κρίτων Τορναρίτης, ἐκ μέρους, καὶ τῆ συγκαταθέσει, τοῦ ὁποίου συνετάχθη, βάσει τῆς σχετικῆς νομοθεσίας, τὸ κατηγορητήριον καὶ ὑπεβλήθη ἡ ἐν λόγω αἴτησις, δὲν κατεῖχε, κατὰ τὸν οὐσιώδη χρόνον, νομίμως τὸ ἀξίωμα τοῦ Γενικοῦ Εἰσαγγελέως, διότι ἔδει νὰ θεωρηθῆ ὡς ὑποχρεωτικῶς ἀφυπηρετήσας κατὰ τὴν 27ην Μαΐου 1970 ὅτε συνεπλήρωσε τὸ 68ον ἔτος τῆς ἡλικίας του.

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Ο συνήγορος τοῦ καθ οὖ ἡ αἴτησις ὑπέβαλε, περαιτέρω, ὅτι παράτασις τῆς θητείας τοῦ κ. Τορναρίτη ὡς Γενικοῦ Εἰσαγγελέως μετὰ τὴν 27ην Μαΐου 1970 ἤτο ἄκυρος ὡς οὖσα ἀντισυνταγματική, ἐν ὅψει τῶν προνοιῶν τῶν ἄρθρων 112.4, καὶ 153.7 (1) τοῦ Συντάγματος.

Τὸ ἄρθρον 112.4 τοῦ Συντάγματος προνοεί ότι:-

« Ο γενικός είσαγγελεύς και ὁ βοηθός γενικοῦ είσαγγελέως τῆς Δημοκρατίας είναι μέλη τῆς μονίμου νομικῆς ὑπηρεσίας τῆς Δημοκρατίας και ὑπηρετοῦσιν, ὑφ' οὺς ὁρους οἱ δικασταὶ τοῦ ᾿Ανωτάτου Δικαστηρίου πλὴν τοῦ προέδρου τούτου καὶ δὲν ἀπολύονται, είμὴ ὑφ οὺς ὁρους καὶ καθ' ὁν τρόπον οἱ δικασταὶ οὖτοι».

Τὸ δὲ ἄρθρον 153.7 (1) τοῦ Συντάγματος προνοεί ὅτι:-

« Οἱ ἔλληνες Δικασταὶ καὶ ὁ τοῦρκος Δικαστής τοῦ 'Ανωτάτου Δικαστηρίου εἶναι μόνιμα μέλη τῆς δικαστικῆς ὑπηρεσίας τῆς Δημοκρατίας καὶ παραμένουσιν ἐν τῆ ὑπηρεσία μέχρι τοῦ ἐξηκοστοῦ ὀγδόου ἔτους συμπεπληρωμένου».

Έκ τῶν ἐνώπιον ἡμῶν τεθέντων στοιχείων προκύπτει ὅτι ἡ θητεία τοῦ κ. Τορναρίτη ὡς Γενικοῦ Εἰσαγγελέως παρετάθη κατ' ἀρχὰς διὰ τρία ἔτη, μέχρι τῆς 27ης Μαΐου 1973, καὶ ἀκολούθως δι' ἄλλα τρία ἔτη, μέχρι τῆς 27ης Μαΐου 1976. Ἡ παράτασις μέχρι τῆς 27ης Μαΐου 1973 — (καὶ οὐσιαστικῶς περὶ αὐτῆς ἀσχολούμεθα διότι ἡ αἴτησις περὶ ἄρσεως τῆς ἀσυλίας κατεχωρήθη τὴν 3ην Μαΐου 1973) — ἐγένετο συμφώνως πρὸς ἀπόφασιν τοῦ Ύπουργικοῦ Συμβουλίου ληφθεῖσαν τὴν 9ην ᾿Απριλίου 1970 βάσει τῶν σχετικῶν προνοιῶν τοῦ Περὶ Συντάξεων Νόμου (Κεφ. 311).

Τὸ ἄρθρον 153.11 τοῦ Συντάγματος προνοεί ότι:-

« Ἡ ἀντιμισθία καὶ οὶ λοιποὶ δροι ὑπηρεσίας τῶν ἔλλήνων

217 Matou 1973 FENIKOE EIEAFFEAEYE THE AHMOKPATIAE V. Δικασπῶν καὶ τοῦ τούρκου Δικαστοῦ τοῦ ᾿Ανωτάτου Δικαστηρίου καθορίζονται διὰ νόμου».

'Επίσης τὸ ἄρθρον 8(4) τοῦ Περὶ Δικαστηρίων Νόμου τοῦ 1960 (Νόμος 14/60) προνοεῖ ὅτι:-

« Τηρουμένων τῶν διατάξεων τοῦ Συντάγματος καὶ τοῦ παρόντος νόμου, κατὰ τὰ λοιπὰ ἔκαστος Δικαστής θὰ ὑπόκειται εἰς οἰονδήποτε νόμον ἢ κανονισμὸν ρυμθίζοντα ζητήματα ὑπηρεσίας τῶν μελῶν τῆς δημοσίας ὑπηρεσίας τῆς Δημοκρατίας».

Δυνάμει τοῦ ἄρθρου 2 τοῦ Νόμου 14/60 ὁ ὅρος «Δικαστής» περιλαμβάνει καὶ Δικαστήν τοῦ ἀνωτάτου Δικαστηρίου.

Έκ τῶν προαναφερθεισῶν προνοιῶν προκύπτει ὅτι ὁ Γενικὸς Εἰσαγγελεὺς ὑπόκειται, ὡς οἱ Δικασταὶ τοῦ ᾿Ανωτάτου Δικαστηρίου, «εἰς οἰονδήποτε νόμον ἢ κανονισμὸν ρυθμίζοντα ζητήματα ὑπηρεσίας τῶν μελῶν τῆς δημοσίας ὑπηρεσίας τῆς Δημοκρατίας».

Είς ἐκ τῶν ὁρων ὑπηρεσίας τῶν μελῶν τῆς δημοσίας ὑπηρεσίας τῆς Δημοκρατίας περιλαμβάνεται εἰς τὸ ἄρθρον 8 τοῦ Περὶ Συντάξεων Νόμου (Κεφ. 311), ὡς τοῦτο ἐτροποποιήθη διὰ τοῦ Περὶ Συντάξεων (Τροποποιητικοῦ) Νόμου τοῦ 1967 (Νόμος 9/67). Ἡ παράγραφος (4) τοῦ ἄρθρου 8 προνοεῖ ὅτι:-

« 'Ανεξαρτήτως τῶν διατάξεων τοῦ παρόντος ἄρθρου τὸ Ύπουργικὸν Συμβούλιον δύναται, ἐὰν θεωρῷ τοῦτο ἐπιθυμητὸν πρὸς τὸ δημόσιον συμφέρον, νὰ ἐπιτρέψῃ εἰς ὑπάλληλον ὅπως παραμείνῃ ἐν τῷ ὑπηρεσία μετὰ τὴν ἡμερομηνίαν καθ ἢν συμπληροῦται ἡ ἡλικία ἀναγκαστικῆς ἀφυπηρετήσεως αὐτοῦ ἐπὶ τοσοῦτο χρονικὸν διάστημα ὅσον τὸ Συμβούλιον ἤθελεν ὁρίσει».

'Ως ήδη ἀνεφέρθη, τὴν 9ην 'Απριλίου 1970 τὸ Ύπουργικὸν Συμβούλιον, δι' ἀποφάσεως αὐτοῦ ὑπ' ἀριθμὸν 9577, ἀπεφάσισε τὴν παράτασιν τῆς θητείας τοῦ κ. Τορναρίτη ὡς Γενικοῦ Εἰσαγγελέως διὰ περίοδον τριῶν ἐτῶν, μετὰ τὴν 27ην Μαΐου 1970, ὅτε θὰ συνεπληροῦτο ἡ ἡλικία ἀφυπηρετήσεως αὐτοῦ, ἤτοι μέχρι τῆς 27ης Μαΐου 1973, ἐὰν ὁ Πρόεδρος τῆς Δημοκρατίας ἤθελε παρατείνει, διὰ τὸ αὐτὸ διάστημα, τὸν ήδη ὑφιστάμενον διορισμὸν τοῦ κ. Τορναρίτη ὡς Γενικοῦ Εἰσαγγελέως. Τὴν δὲ 10ην 'Απριλίου 1970, διὰ πράξεώς του ὑπ' ἀριθμὸν 103/70, ὁ Πρόεδρος τῆς Δημοκρατίας, ὡς τὸ δυνάμει τοῦ Συντάγματος ἀρμόδιον πρὸς τοῦτο ὅργανον, παρέτεινε μέχρι τῆς 27ης Μαΐου 1973 τὴν θητείαν τοῦ κ. Τορναρίτη ὡς Γενικοῦ Εἰσαγγελέως.

Δεδομένου ότι ὁ Γενικὸς Εἰσαγγελεὺς ὑπηρέτει ὑπὸ ὅρους οἱ ὁποῖοι περιελάμβανον τὴν δυνατότητα παρατάσεως τῆς θητείας του, δυνάμει τοῦ ἄρθρου 8(4) τοῦ Περὶ Συντάξεων Νόμου, καὶ δεδομένου ότι ἡ τοιαύτη παράτασις ἐγένετο ὑπὸ τῶν κεκτημένων πρὸς τοῦτο ἀρμοδιότητα ὀργάνων, ἥτοι τοῦ Ὑπουργικοῦ Συμβουλίου καὶ τοῦ Προέδρου τῆς Δημοκρατίας, ἔχομεν τὴν γνώμην ότι ἡ θητεία τοῦ Γενικοῦ Εἰσαγγελέως παρετάθη νομίμως μέχρι τῆς 27ης Μαΐου 1973. Τὸ αὐτὸ δὲ ἰσχύει καὶ διὰ τὴν μεταγενεστέραν παράτασιν τῆς θητείας τοῦ κ. Τορναρίτη ὡς Γενικοῦ Εἰσαγγελέως μέχρι τῆς 27ης Μαΐου 1976, δι' ἐτέρας ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου, ὑπ ἀριθμὸν 12174, ληφθείσης τὴν 8ην Μαρτίου 1973, καὶ δι' ἐτέρας πράξεως τοῦ Προέδρου τῆς Δημοκρατίας, ὑπ' ἀριθμὸν 136/73, γενομένης τὴν 13ην Μαρτίου 1973.

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'Ως έκ τούτου ή ὑπὸ ἐξέτασιν ἔνστασις τοῦ συνηγόρου τοῦ καθ' οὖ ή αἴτησις ἀπορρίπτεται ὡς ἀβάσιμος.

"Ενστασις άπορρίπτεται.

This is an English translation of the decision in Greek appearing at at pp. 92 - 95, ante.

Attorney-General of the Republic—Extension of services of, on attaining the age of compulsory retirement—Lawfully made—Section 8(4) of the Pensions Law, Cap. 311 (as amended by Law 9 of 1967), sections 2 and 8(4) of the Courts of Justice Law, 1960 (Law 14 of 1960) and Articles 112.4, 153.7(1) and 153.11 of the Constitution.

Preliminary objection.

Preliminary objection raised in the course of the hearing of an application for the lifting, under Article 83 of the Constitution, of the immunity from prosecution of a Member of the House of Representatives, Nicos Sampson, in order that he may be prosecuted for certain offences.

- L. Loucaides, Senior Counsel of the Republic and M. Flourentzos, for the Applicant.
- L. Clerides, A. Hadjiloannou, A. Neocleous, T. Eliades, G. Aristidou, P. Demetriou and D. Sampson, for the Respondent.

The facts relating to the preliminary objection sufficiently appear in the decision of the Supreme Court dismissing the objection.

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THE ATTORNEY-GENERAL OF THE REPUBLIC V. NICOS SAMPSON The following decision was delivered by:-

TRIANTAFYLLIDES, P.: In the course of the hearing of the present application, for the lifting, under Article 83 of the Constitution, of the immunity from prosecution of a Member of the House of Representatives, Nicos Sampson, in relation to the offences set out in the charge sheet attached to the application, counsel for the Respondent raised an objection that the Attorney-General of the Republic, Mr. Criton Tornaritis, on behalf, and with the consent, of whom, in accordance with the relevant legislation, the charges were framed and the said application filed, was not, during the material time, lawfully in office as the Attorney-General, because he ought to be deemed to have compulsorily retired therefrom on the 27th May, 1970, when he attained the age of sixty-eight years.

Counsel for the Respondent submitted, further, that the extension of the services of Mr. Tornaritis as Attorney-General after the 27th May, 1970, was null and void as being unconstitutional, in view of the provisions of Articles 112.4 and 153.7 (1) of the Constitution.

Article 112.4 of the Constitution provides that:-

"The Attorney-General and the Deputy Attorney-General of the Republic shall be members of the permanent legal service of the Republic and shall hold office under the same terms and conditions as a Judge of the High Court other than its President and shall not be removed from office except on the like grounds and in the like manner as such Judge of the High Court".

Also, Article 153.7 (1) of the Constitution provides that:-

"The Greek Judges and the Turkish Judge of the High Court shall be permanent members of the judicial service of the Republic and shall hold office until they attain the age of sixty-eight".

From the material placed before us it emerges that the services of Mr. Tornaritis as Attorney-General were extended at first

Note: The application for leave to prosecute the Respondent was withdrawn before the delivery of the reserved judgment of the Court.

for three years, until the 27th May, 1973, and subsequently for another three years, until the 27th May, 1976. The extension until the 27th May, 1973—(and this is the one with which we are concerned as the application for lifting the immunity was filed on the 3rd May, 1973)—was effected in accordance with a decision of the Council of Ministers taken on the 9th April, 1970, under the relevant provisions of the Pensions Law (Cap. 311).

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Article 153.11 of the Constitution provides that:-

"The remuneration and other conditions of service of the Greek Judges and of the Turkish Judge of the High Court shall be fixed by a law".

Also section 8(4) of the Courts of Justice Law, 1960 (Law 14/60), provides that:-

"Subject to the provisions of the Constitution and of this Law, every Judge shall, in all other respects, be subject to any law or regulation regulating matters of service of members of the public service of the Republic".

By virtue of section 2 of Law 14/60 the term "Judge" includes, also, a Judge of the Supreme Court.

From the aforereferred provisions it emerges that the Attorney-General is subject, as the Judges of the High Court, "to any law or regulation regulating matters of service of members of the public service of the Republic".

One of the terms of service of the members of the public service of the Republic is to be found in section 8 of the Pensions Law (Cap. 311), as it has been amended by the Pensions (Amendment) Law, 1967 (Law 9/67). Paragraph 4 of section 8 provides that:—

"Notwithstanding the provisions of the present section the Council of Ministers may, if it deems it desirable in the public interest, allow an officer to remain in the service after the date when he has attained the age of compulsory retirement, for so long as the Council may appoint".

As has been already stated, on the 9th April, 1970, the Council of Ministers, by its decision No. 9577, decided the extension of the services of Mr. Tornaritis as Attorney-General for a period of three years, after the 27th May, 1970, when he

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would had attained the age of retirement, namely until the 27th May, 1973, if the President of the Republic would extend, for the same period, the already existing appointment of Mr. Tornaritis as Attorney-General. On the 10th April, 1970, by act No. 103/70, the President of the Republic, being the appropriate organ under the Constitution, extended until the 27th May, 1973, the services of Mr. Tornaritis as Attorney-General.

In view of the fact that the Attorney-General was serving under conditions which included the possibility of the extension of his services, by virtue of section 8(4) of the Pensions Law, and as, also, such extension was made by the organs vested with the relevant powers, namely the Council of Ministers and the President of the Republic, we are of the view that the services of the Attorney-General were lawfully extended until the 27th May, 1973. The same applies, too, to the subsequent extension of the services of Mr. Tornaritis as Attorney-General until the 27th May, 1976, by another decision of the Council of Ministers, No. 12174, taken on the 8th March, 1973, and by another act of the President of the Republic, No. 136/73, of the 13th March, 1973.

For these reasons the objection raised by counsel for the Respondent is dismissed as unfounded.

Objection dismissed.