[ΔΙΚΑΣΤΑΙ: ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, Πρόεδρος, ΣΤΑΥΡΙΝΙΔΗΣ, Λ. ΛΟΪΖΟΥ, ΧΑΤΖΗΑΝΑΣΤΑΣΣΙΟΥ, Α. ΛΟΪΖΟΥ, Δικασταί]

ΝΙΚΟΣ ΤΣΑΓΓΑΡΙΔΗΣ ΚΑΙ ΑΛΛΟΙ (ΑΡ. 2),

'Εφεσείοντες,

*κατὰ**

ΤΗΣ ΚΥΠΡΙΑΚΗΣ ΔΗΜΟΚΡΑΤΙΑΣ, ΜΕΣΩ
(1) ΥΠΟΥΡΓΟΥ ΑΜΥΝΗΣ,
(2) ΑΡΧΗΓΟΥ ΕΘΝΙΚΗΣ ΦΡΟΥΡΑΣ,

'Εφεσιβλήτων.

(*'Αναθεωρητικὴ Δικαιοδοσία ''Εφεσις 'Αρ.* 152).

'Ερμηνεία Νομικῶν 'Εγγράφων – 'Ερμηνευτικοὶ Κανόνες – 'Ερμηνεία τῆς λέξεως " ἀπολύει" ὡς αὕτη χρησιμοποιεῖται εἰς τὴν ἐπίδικον ἀπόφασιν τοῦ 'Υπουργικοῦ Συμβουλίου – Πρέπει νὰ ἑρμηνευθῇ ὡς ἀναφερομένη οὐχὶ μόνον εἰς τὸ παρὸν ἀλλὰ καὶ εἰς τὸ μέλλον. 5

Στρατιωτικὴ 'Υπηρεσία – 'Εθνικὴ Φρουρὰ – 'Απόφασις περὶ ἀπολύσεως κανονικῶς ὑπηρετούντων στρατευσίμων...... οἵτινες " ἔχουν ἐγγραφῇ εἰς Πανεπιστήμια ἢ 'Ανωτάτας Σχολὰς τοῦ ἐξωτερικοῦ" – Εἰς ποίους ἀναφέρεται – 'Ερμηνεία τῆς λέξεως " ἀπολύει" ὡς αὕτη χρησιμοποιεῖται εἰς τὴν ἐπίδικον ἀπόφασιν τοῦ 10 *'Υπουργικοῦ Συμβουλίου.*

'Η παροῦσα ἔφεσις ἐγένετο ἐναντίον τῆς ἀποφάσεως ἑνὸς ἐκ τῶν Δικαστῶν τοῦ 'Ανωτάτου Δικαστηρίου διὰ τῆς ὁποίας ἀπερρίφθη ἡ προσφυγὴ τῶν ἐφεσειόντων κατὰ τῆς ἀρνήσεως ἢ παραλείψεως τῶν ἐφεσιβλήτων ὅπως ἀπολύσωσι τούτους ἐκ τῶν 15 τάξεων τῆς 'Εθνικῆς Φρουρᾶς.

'Η ἐγκυρότης ἢ μὴ τῆς ἐπιδίκου ἀποφάσεως βασίζεται ἐπὶ τῆς ἑρμηνείας τῆς λέξεως " ἀπολύει" εἰς τὴν πρώτην παράγραφον τῆς ὑπὸ ἡμερ. 29.8.1974 ἀποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου ἡ ὁποία ἔχει ὡς ἀκολούθως: 20

" 1. Τὸ 'Υπουργικὸν Συμβούλιον, ἀσκοῦν τὰς εἰς αὐτὸ χορηγουμένας ἐξουσίας ὑπὸ τοῦ ἄρθρου 9 (1) τῶν Περὶ τῆς

* Editor's note: An English translation of this judgment appears at pp. 320–348 *post.*

Ἐθνικῆς Φρουρᾶς Νόμων τοῦ 1964 ἕως 1968, διὰ τῆς παρούσης ἀποφάσεως ἀπολύει:

(α) ἅπαντας τοὺς ἐφέδρους τῶν κλάσεων 1958 ἕως 1964, ἀμφοτέρων συμπεριλαμβανομένων·

5 (β) ἅπαντας τοὺς ἐφέδρους, τοὺς φοιτῶντας εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ·

(γ) ἅπαντας τοὺς ἐφέδρους, τοὺς ἀποδεδειγμένως διαμένοντας μονίμως εἰς τὸ ἐξωτερικόν·

(δ) τοὺς κανονικῶς ὑπηρετοῦντας στρατευσίμους καὶ συμ-
10 πληρώσαντας περίοδον θητείας πέραν τῶν εἰκοσιτεσσάρων μηνῶν, τοὺς ἱκανοποιοῦντας τὸν Ὑπουργὸν ὅτι:

(ι) ἔχουν ἐγγραφῆ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ·

(ιι) ἔχουν τύχει, κατόπιν ἐπιλογῆς ὑπὸ Ἐπιτροπῆς
15 τυγχανούσης τῆς ἐγκρίσεως τοῦ Ὑπουργικοῦ Συμβουλίου, καὶ διὰ περίοδον οὐχὶ μικροτέραν ἑνὸς ἀκαδημαϊκοῦ ἔτους, ὑποτροφίας διὰ πανεπιστημιακὰς ἢ μεταπτυχιακὰς σπουδὰς εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς ἢ Ἱδρύματα ἰσότιμα
20 πρὸς πανεπιστήμια εἰς τὸ ἐξωτερικόν, ἵνα οὗτοι δυνηθῶσι νὰ φοιτήσωσιν εἰς αὐτὰ κατὰ τὸ προσεχὲς ἀκαδημαϊκὸν ἔτος 1974–1975.

2. Ὁ χρόνος ἀπολύσεως τῶν ὑπὸ στοιχεῖα (β) καὶ (δ)(ι) καὶ (ιι) ἀνωτέρω θὰ καθορισθῇ ὑπὸ τοῦ Ὑπουργοῦ ἀναλό-
25 γως τοῦ χρόνου ἐνάρξεως τοῦ ἀκαδημαϊκοῦ ἔτους εἰς ἑκάστην περίπτωσιν".

Ὁ πρῶτος αἰτητὴς ἐνεγράφη εἰς τὴν Φιλοσοφικὴν Σχολὴν τοῦ Πανεπιστημίου Ἀθηνῶν τὴν 12.9.1974· ὁ δεύτερος αἰτητὴς ἐνεγράφη εἰς τὴν Νομικὴν Σχολὴν τοῦ ἰδίου Πανεπιστημίου τὴν
30 29.9.1974 ὁ δὲ τρίτος εἰς τὴν Ἀνωτάτην Σχολὴν Οἰκονομικῶν καὶ Ἐμπορικῶν Ἐπιστημῶν τὴν 25.9.1974.

Ἐνώπιον τῆς ὁλομελίας τοῦ Ἀνωτάτου Δικαστηρίου ὑπεστηρίχθη ὑπὸ τοῦ συνηγόρου τῶν ἐφεσειόντων, ὅτι ἡ ὀρθὴ ἑρμηνεία τῆς ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου ἐξυπα-
35 κούει τὸ δικαίωμα ἀπολύσεως ἁπάντων τῶν στρατευσίμων, οἵτινες θὰ ἱκανοποίουν τὸν Ὑπουργὸν ὅτι εἶχον ἐγγραφῆ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ, καθ' οἱονδήποτε χρόνον μέχρι τῆς λήψεως ἀποφάσεως περὶ τῆς ἀπολύσεώς των.

Περαιτέρω, ἐτονίσθη ὅτι ἡ ἀπόφασις τοῦ Ὑπουργικοῦ Συμβουλίου δὲν ὁρίζει ἡμερομηνίαν ἀπολύσεως καὶ δὲν ἀναφέρεται μόνον εἰς τοὺς πρὸ τῆς ἡμερομηνίας ἐκδόσεως τῆς ὡς ἄνω ἀποφάσεως ἐγγραφέντας στρατευσίμους. Ἀντιθέτως, ὑπεστηρίχθη ἐκ μέρους τοῦ συνηγόρου τῶν ἐφεσιβλήτων ὅτι ἡ ἀπόφασις, ὀρθῶς ἑρμηνευομένη ἐντὸς τῶν Κανόνων τῆς γραμματικῆς ἑρμηνείας, καὶ τῆς σημασίας τῶν λέξεων καλύπτει μόνον ἐκείνους τοὺς στρατευσίμους, οἱ ὁποῖοι εἶχον ἤδη ἐγγραφῆ εἰς Πανεπιστήμια μέχρι τῆς 29ης Αὐγούστου, 1974. 5

Τὸ Ἀνώτατον Δικαστήριον ἔκρινεν κατὰ πλειοψηφίαν (κ.κ. Σταυρινίδης, Λ. Λοΐζου καὶ Χατζηαναστασσίου Δικασταί), διαφωνούντων τῶν κ.κ. Τριανταφυλλίδη (Προέδρου) καὶ Α. Λοΐζου (Δικαστοῦ) ὅτι:– 10

(α) Ἡ λέξις «ἀπολύει» ὡς αὕτη χρησιμοποιεῖται εἰς τὴν ἐπίδικον ἀπόφασιν τοῦ Ὑπουργικοῦ Συμβουλίου πρέπει νὰ ἑρμηνευθῇ ὡς ἀναφερομένη οὐχὶ μόνον εἰς τὸ παρὸν ἀλλὰ καὶ εἰς τὸ μέλλον. Οἱ αἰτηταὶ ἐμπίπτουν ἐντὸς τῶν προνοιῶν τῆς ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου καί, κατὰ συνέπειαν, ὤφειλον νὰ εἶχον ἀπολυθῇ. Ἡ ἄρνησις τοῦ Ὑπουργοῦ Ἐσωτερικῶν νὰ ἀπολύσῃ τοὺς ἐφεσείοντας ἦτο ἀντίθετος πρὸς τὰς διατάξεις τοῦ Συντάγματος ἢ καὶ τῶν νόμων καὶ ἐγένετο καθ' ὑπέρβασιν ἐξουσίας. 15 20

(β) *Ὁ Πρόεδρος τοῦ Ἀνωτάτου Δικαστηρίου Δικαστὴς κ. Τριανταφυλλίδης καὶ ὁ Δικαστὴς κ. Α. Λοΐζου ἔκρινεν ὅτι:*

Ὀρθῶς οἱ ἐφεσίβλητοι ἠρνήθησαν νὰ ἀπολύσουν τοὺς ἐφεσείοντας δυνάμει τῆς ὑποπαραγράφου δ (ι) τῆς ἐν λόγῳ ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου. 25

(γ) *Ὁ Πρόεδρος τοῦ Ἀνωτάτου Δικαστηρίου, Δικαστὴς κ. Τριανταφυλλίδης, ἔκρινεν περαιτέρω ὅτι:* Τὸ θέμα τῆς ἀπολύσεως τῶν ἐπιθυμούντων νὰ σπουδάσουν εἰς τὸ ἐξωτερικὸν στρατευσίμων ἔτυχε ρυθμίσεως κατὰ τρόπον συνεπαγόμενον ἄνισον μεταχείρισιν διὰ στρατευσίμους ὡς οἱ ἐφεσείοντες καί, κατὰ συνέπειαν, ἡ ἐπίδικος ἄρνησις τῶν ἐφεσιβλήτων νὰ ἀπολύσουν ἐκ τῶν τάξεων τῆς Ἐθνικῆς Φρουρᾶς τοὺς ἐφεσείοντας, προκύψασα, κατ' ἐφαρμογὴν τῆς εἰρημένης ρυθμίσεως, παρὰ τὴν ἐγγραφήν των ἐν τῷ μεταξὺ διὰ πανεπιστημιακὰς σπουδὰς ἐν Ἑλλάδι, ἀποτελεῖ διοικητικὴν πρᾶξιν ἀντιβαίνουσαν πρὸς τὸ ἄρθρον 28.1 τοῦ Συντάγματος καὶ ὡς ἐκ τούτου δέον νὰ κηρυχθῇ ἄκυρος καὶ ἐστερημένη οἱουδήποτε ἀποτελέσματος. 30 35

Ὑποθέσεις παρατεθεῖσαι: 40

Grey v. *Pearson* [1857] 6 H. L. Cas. 61;

Mattison v. *Hart* [1854] 14 C.B. 357;

Caledonian Ry. Co. v. *North British Ry. Co.* [1881] 6 App. Cas. 114;

5 *Vacher & Sons Ltd.* v. *The London Society of Compositors* [1913] A.C. 107;

Cooke v. *Charles A. Vogeler Company* [1901] A.C. 102;

Ellerman Lines Ltd. v. *Murray* [1931] A.C. 126;

Καραγιάννης ν. *Δημοκρατίας* (1974) 3 C.L.R. 420;

Μικρομμάτης ν. *Δημοκρατίας*, 2 R.S.C.C. 125;

10 *Μελετίου καὶ Ἄλλοι* ν. *Ἐπαρχιακοῦ Γραφείου Ἐργασίας* (1975) 2 C.L.R. 21;

Ἀποφάσεις Συμβουλίου Ἐπικρατείας τῆς Ἑλλάδος ὑπ' ἀρ. 81/1951, 749/33, 1735/53, 452/33, 1645/55, 164/43, 1229/59.

Ἔφεσις.

Ἔφεσις κατὰ ἀποφάσεως Δικαστοῦ τοῦ Ἀνωτάτου Δικαστηρίου
15 (Μαλαχτός, Δικαστής) ἡ ὁποία ἐξεδόθη τὴν 11ην Ἰανουαρίου, 1975 (Ἀρ. Ὑπ. 384/74)* καὶ διὰ τῆς ὁποίας αἱ προσφυγαὶ τῶν ἐφεσειόντων, κατὰ τῆς ἀρνήσεως καὶ/ἢ παραλείψεως τῶν ἐφεσιβλήτων ὅπως ἀπολύσωσι τούτους ἐκ τῶν τάξεων τῆς Ἐθνικῆς Φρουρᾶς, ἀπερρίφθησαν.

20 Λ. Παπαφιλίππου, διὰ τοὺς ἐφεσείοντας.

Ρ. Γαβριηλίδης, Δικηγόρος τῆς Δημοκρατίας, διὰ τοὺς ἐφεσιβλήτους.

Cur. adv. vult.

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, ΠΡ.: Εἰς τὴν παροῦσαν ὑπόθεσιν ἕκα-
25 στος ἐξ ἡμῶν θὰ ἐκδώσῃ κεχωρισμένως τὴν ἐτυμηγορίαν του· θὰ πράξῃ τοῦτο πρῶτον ὁ Δικαστὴς κ. Χατζηαναστασσίου, ἀκολούθως οἱ Δικασταὶ κ.κ. Α. Λοΐζου, Σταυρινίδης, Λ. Λοΐζου καὶ τελευταῖος ἐγώ.

ΧΑΤΖΗΑΝΑΣΤΑΣΣΙΟΥ, Δ.:– Ἀνεξαρτήτως τῆς συνταγματικῆς
30 δομῆς τοῦ "Περὶ τῶν Ἐνόπλων Δυνάμεων τῆς Δημοκρατίας" ἄρθρου, ἡ δημιουργηθεῖσα ἐν Κύπρῳ κατάστασις μετὰ τὰ γεγονότα τοῦ Δεκεμβρίου 1963 καὶ αἱ συνεχεῖς ἀπειλαὶ ἐκ μέρους τῆς Τουρκίας περὶ εἰσβολῆς ἢ ἐνεργειῶν κατευθυνομένων κατὰ τῆς ἀνεξαρτησίας καὶ τῆς ἐδαφικῆς ἀκεραιότητος τῆς Νήσου κατέστησαν ἀναγκαίαν
35 τὴν ὀργάνωσιν τῆς ἀμύνης τῆς Δημοκρατίας, διὰ τῆς δημιουργίας

* Ἴδε σελίδα 1.

στρατοῦ ἱκανοῦ νὰ ἀντιμετωπίσῃ πᾶσαν ξένην ἐπιβουλὴν καὶ ἰσχυροποιήσῃ διὰ τῆς παρουσίας του τὸ συναίσθημα τῆς ἀσφαλείας τῶν πολιτῶν τῆς ἀνεξαρτήτου καὶ κυριάρχου Δημοκρατίας. (Ἴδε "Οἱ Περὶ τῆς Ἐθνικῆς Φρουρᾶς Νόμοι τοῦ 1964–1968").

Τὰ πρόσφατα δραματικὰ γεγονότα ἐν Κύπρῳ καὶ ἡ Τουρκικὴ εἰσβολὴ ἀπέδειξαν περιτράνως τὴν σοβαρὰν ἐθνικὴν ἀποστολὴν τῆς Ἐθνικῆς Φρουρᾶς, ἥτις διεδραμάτισε τὸν πρωτεύοντα ρόλον εἰς τὴν ἄμυναν τῆς Νήσου. 5

Ὡς φαίνεται ἐκ τοῦ ἄρθρου 3(3) τῶν Νόμων 1964–1968, τὸ Ὑπουργικὸν Συμβούλιον κέκτηται ἐξουσίαν ὅπως ἀπὸ καιροῦ εἰς καιρὸν καθορίζῃ τὸν ἀριθμὸν τῆς δυνάμεως εἰς ἀξιωματικοὺς καὶ ὁπλίτας. 10

Ἐπειδὴ ἡ ἄμυνα τῆς πατρίδος ἀποτελεῖ καὶ καθῆκον τιμητικόν, ἐκπλήρωσις τῆς στρατιωτικῆς ὑποχρεώσεως ὀργανοῦται καὶ διέπεται ὑπὸ τῆς νομοθεσίας τῆς Ἐθνικῆς Φρουρᾶς, τηρουμένων δὲ τῶν διατάξεων τοῦ ἐδαφίου (3), ἅπαντες οἱ πολῖται τῆς Δημοκρατίας, ἀπὸ τῆς 1ης Ἰανουαρίου τοῦ ἔτους καθ' ὃ συνεπλήρωσαν τὸ 18ον ἔτος τῆς ἡλικίας των μέχρι τῆς 1ης Ἰανουαρίου τοῦ ἔτους καθ' ὃ συνεπλήρωσαν τὸ 50ὸν ἔτος τῆς ἡλικίας των, ὑπόκεινται εἰς τὰς διατάξεις τοῦ παρόντος Νόμου καὶ ὑπέχουν ὑποχρέωσιν ὑπηρεσίας ἐν τῇ Δυνάμει (ἄρθρον 4(1))· καὶ συμφώνως πρὸς τὴν ὑποπαράγραφον (2) ἡ ὑποχρέωσις ὑπηρεσίας ἐν τῇ Δυνάμει διακρίνεται εἰς ὑποχρέωσιν θητείας καὶ ὑποχρέωσιν ἐφέδρων. 15 20

Δέον νὰ σημειωθῇ ὅτι τὸ ἄρθρον 5(1), τηρουμένων τῶν διατάξεων τοῦ ἐδαφίου (4), ὁρίζει: "πᾶς στρατεύσιμος ὑπόκειται εἰς ὑποχρέωσιν θητείας ἡ διάρκεια τῆς ὁποίας εἶναι εἰκοσιτετράμηνος ἐκτὸς ἐὰν τὸ Ὑπουργικὸν Συμβούλιον διὰ σχετικῆς ἀποφάσεως ἤθελεν ὁρίσει ὅτι αὕτη θὰ εἶναι δεκαοκτάμηνος ἐν σχέσει πρὸς οἱανδήποτε κλάσιν. 25

Νοεῖται ὅτι: 30

" (α) Μετὰ πάροδον θητείας ἑνὸς ἔτους ἢ ὁσάκις ἡ στρατιωτικὴ ἐπάρκεια καὶ ἀνάγκαι τῆς χώρας ἐπιτρέπωσιν ἢ λόγοι δημοσίου συμφέροντος ἐπιβάλλωσι τοῦτο (ἴδε κείμενον) τὸ Ὑπουργικὸν Συμβούλιον δύναται δι' ἀποφάσεως αὐτοῦ, δημοσιευομένης εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας, νὰ συντάμῃ τὴν περίοδον θητείας εἰς οἱανδήποτε περίοδον οὐχὶ μικροτέραν τῶν ἓξ μηνῶν, εἴτε κατὰ κλάσιν ἢ τμῆμα αὐτῆς εἴτε κατὰ περιφερείας ἢ κατηγορίας ἢ εἰς ἐξαιρετικὰς περιπτώσεις κατ' ἄτομα, τῇ αἰτήσει τούτων καὶ λόγῳ εἰδικῶν περιστάσεων. 35 40

(β) Τὸ 'Υπουργικὸν Συμβούλιον ἐν οἱαδήποτε τοιαύτῃ ἀποφάσει διὰ σύντμησιν τῆς περιόδου θητείας δύναται νὰ ὁρίσῃ ὅπως οἱ στρατεύσιμοι εἰς οὓς ἀφορᾷ ἡ ἀπόφασις συμπληρώσωσι τὴν θητείαν των ὅταν ὁ λόγος διὰ τὸν
5 ὁποῖον ἐγένετο ἡ σύντμησις παύσῃ ὑφιστάμενος, καὶ εἰς τοιαύτην περίπτωσιν εὐθὺς ὡς ὁ τοιοῦτος λόγος παύσῃ ὑφιστάμενος οἱ ὡς εἴρηται στρατεύσιμοι ὑποχρεοῦνται ὅπως προσέλθωσι πρὸς συμπλήρωσιν τῆς θητείας των".

Τὸ 'Υπουργικὸν Συμβούλιον διὰ τῆς ἀποφάσεως αὐτοῦ ὑπ'
10 ἀριθμὸν 13391 ἡμερομηνίας 1ης 'Ιουλίου 1974 βάσει τῆς προμνησθείσης ἐπιφυλάξεως (α) τοῦ ἐδαφίου 1 τοῦ ἄρθρου 5 τῶν Περὶ τῆς 'Εθνικῆς Φρουρᾶς Νόμων 1964–1968 ἀπεφάσισεν ὅπως συντάμῃ καὶ διὰ τῆς παρούσης συντέμνει εἰς δεκατέσσαρας μῆνας τὴν περίοδον θητείας πάντων τῶν νῦν ὑπηρετούντων στρατευσίμων
15 οἱασδήποτε κλάσεως καὶ πάντων τῶν κληθέντων καὶ κληθησομένων στρατευσίμων.

'Η ἀπόφασις αὕτη ἐδημοσιεύθη εἰς τὴν 'Επίσημον 'Εφημερίδα τῆς Δημοκρατίας τῆς 12ης 'Ιουλίου 1974, Παράρτημα 4ον, ὑπ' ἀριθμὸν γνωστοποιήσεως 64.

20 Περαιτέρω, ἡ ἀπόφασις αὕτη ἐκοινοποιήθη ἐγγράφως εἰς τὸν ἀρχηγὸν τοῦ Γενικοῦ 'Επιτελείου τῆς 'Εθνικῆς Φρουρᾶς ὑπὸ τοῦ Γενικοῦ Διευθυντοῦ τοῦ 'Υπουργείου 'Εσωτερικῶν καὶ 'Αμύνης διὰ τῆς ἀκολούθου ἐπιστολῆς:

"'Ενετάλην παρὰ τοῦ 'Υπουργοῦ 'Εσωτερικῶν καὶ 'Αμύνης
25 ὅπως σᾶς ἀποστείλω συνημμένως ἀντίγραφον τῆς 'Αποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου ὑπ' ἀρ. 13391 τῆς 1.7. 1974, δι' ἧς συντέμνεται ἡ θητεία ἁπάντων τῶν ἐθνοφρουρῶν εἰς δεκατέσσαρας μῆνας.

Παρακαλεῖσθε ὅπως προβῆτε εἰς τὴν ἀπόλυσιν ὅλων τῶν
30 ἐθνοφρουρῶν, οἵτινες συνεπλήρωσαν 14μηνον θητείαν μέχρι τῆς 20ῆς 'Ιουλίου, 1974".

Περιττὸν νὰ τονισθῇ, ὅτι ἡ ἀπόφασις ἐκείνη μὴ ἀνακληθεῖσα ἐξακολουθῇ νὰ ἰσχύῃ καὶ κατὰ συνέπειαν, δυνάμει τῆς ἀποφάσεως ταύτης, οἱ συμπληρώσαντες δεκατετράμηνον περίοδον θητείας
35 ἐξεπλήρωσαν τὴν στρατιωτικὴν αὐτῶν ὑποχρέωσιν ἐκτὸς ἐὰν ἐκλήθησαν καὶ ὑπηρετοῦν ὡς ἔφεδροι.

Συμφώνως πρὸς τὰς διατάξεις τοῦ ἄρθρου 15 (1), τὴν ἐφεδρείαν τῆς Δυνάμεως ἀποτελοῦσι:

"(α) Οἱ ἐκπληρώσαντες τὴν ὑποχρέωσιν θητείας αὐτῶν ὡς προνοεῖται ἐν τοῖς ἄρθροις 5 καὶ 12 ἀπολυόμενοι ὁριστικῶς τῆς Δυνάμεως·

(β) Οἱ ἀπολυόμενοι δυνάμει τοῦ ἐδαφίου (1) τοῦ ἄρθρου 9 ἐκτὸς ἐὰν τὸ Ὑπουργικὸν Συμβούλιον ἤθελεν ἄλλως ὁρίσει ἐν τῇ σχετικῇ ἀποφάσει· 5

(γ) Οἱ στρατεύσιμοι οἱ ὑπηρετήσαντες ἐπὶ μερικῇ ἢ συνεχῇ ἀπασχολήσει ἐν τῇ Δυνάμει, δυνάμει τοῦ ἄρθρου 30·

(δ) Οἱ ὑπηρετήσαντες πέραν τῶν ἓξ μηνῶν εἰς τακτικὸν Κυπριακὸν Στρατὸν καὶ εἰς τακτικὸν Συμμαχικὸν Στρατὸν κατὰ τὸν τελευταῖον Παγκόσμιον Πόλεμον· 10

(2) Ἅπαντες οἱ ἀνωτέρω παραμένουσιν ἐν τῇ ἐφεδρείᾳ μέχρι συμπληρώσεως τοῦ πεντηκοστοῦ ἔτους τῆς ἡλικίας των".

Ἐπειδὴ οἱ αἰτηταὶ ἐξεπλήρωσαν τὴν στρατιωτικὴν των θητείαν καὶ δὲν ἀπελύθησαν, ὡς προνοεῖται ὑπὸ τοῦ ἄρθρου 5, κατεχώρισαν κατὰ τὴν 16ην Νοεμβρίου 1974 προσφυγήν, δυνάμει τοῦ Ἄρθρου 146 τοῦ Συντάγματος καὶ ἐξαιτοῦντο τὴν ἀκόλουθον θεραπείαν: 15

Δήλωσιν ὅτι ἡ παράλειψις ἢ/καὶ ἄρνησις τῶν καθ' ὧν ἡ αἴτησις νὰ ἀπολύσουν τοὺς αἰτητὰς ἐκ τῆς Ἐθνικῆς Φρουρᾶς εἶναι ἄκυρος καὶ ἐστερημένη παντὸς ἐννόμου ἀποτελέσματος ταυτοχρόνως δὲ ἐπανόρθωσιν τῆς τοιαύτης παραλείψεως. 20

Τὰ πραγματικὰ γεγονότα ἐπὶ τῶν ὁποίων στηρίζεται ἡ παροῦσα αἴτησις ἔχουν ὡς ἀκολούθως: 25

Οἱ αἰτηταί, ὅπως ἤδη ἀνέφερα, ἐζήτησαν ὅπως ἀπολυθοῦν ἀλλ' οἱ καθ' ὧν ἡ αἴτησις παρέλειψαν ἢ ἠρνήθησαν νὰ τοὺς ἀπολύσουν. Ὁ πρῶτος αἰτητὴς ἐγεννήθη τὴν 29.3.1954 καὶ κατετάγη εἰς τὴν Ἐθνικὴν Φρουρὰν τὴν 20.7.1972 ὅπου ὑπηρετεῖ μέχρι σήμερον ὡς ἀνθυπολοχαγός. Τὴν 12.9.1974 ἐνεγράφη εἰς τὴν Φιλοσοφικὴν Σχολὴν τοῦ Πανεπιστημίου Ἀθηνῶν. 30

Ὁ δεύτερος αἰτητὴς ἐγεννήθη τὴν 3.2.1954 καὶ κατετάγη εἰς τὴν Ἐθνικὴν Φρουρὰν τὴν 20.7.1972 ὅπου ὑπηρετεῖ μέχρι σήμερον ὡς ἀνθυπολοχαγός. Τὴν 23.9.1974 ἐνεγράφη εἰς τὴν Νομικὴν Σχολὴν (Οἰκονομικὸν Τμῆμα) τοῦ Πανεπιστημίου Ἀθηνῶν. 35

Ὁ τρίτος αἰτητὴς ἐγεννήθη τὴν 19.8.1954 καὶ κατετάγη εἰς τὴν Δύναμιν τὴν 20.7.1972 ὅπου ὑπηρετεῖ μέχρι σήμερον. Τὴν

25.9.1974 ἐνεγράφη εἰς τὴν 'Ανωτάτην Σχολὴν Οἰκονομικῶν καὶ 'Εμπορικῶν 'Επιστημῶν 'Αθηνῶν.

'Ο τέταρτος αἰτητὴς ἐγεννήθη τὴν 4.6.1953 καὶ κατετάγη εἰς τὴν 'Εθνικὴν Φρουρὰν τὴν 21.7.1972 ὅπου ἐπίσης ὑπηρετεῖ μέχρι 5 σήμερον ὡς λοχίας. Τὴν 10.10.1974 ἐνεγράφη εἰς τὴν 'Ανωτάτην Σχολὴν Οἰκονομικῶν καὶ 'Εμπορικῶν 'Επιστημῶν 'Αθηνῶν.

'Η αἴτησις τῶν αἰτητῶν ἐβασίσθη ἐπὶ τῶν ἀκολούθων νομικῶν σημείων:

1. 'Η παράλειψις ἤ/καὶ ἄρνησις τῶν καθ' ὧν ἡ αἴτησις νὰ 10 ἀπολύσουν τοὺς αἰτητὰς συνιστᾷ ὑπέρβασιν ἢ κατάχρησιν ἐξουσίας, καθ' ὅτι αὕτη ἀντιβαίνει πρὸς τὰς προνοίας τοῦ ἄρθρου 5 τῶν περὶ 'Εθνικῆς Φρουρᾶς Νόμων.

2. Αἱ προσβαλλόμεναι παραλείψεις ἤ/καὶ ἀρνήσεις συνιστοῦν δυσμενῆ διάκρισιν ἔναντι τῶν αἰτητῶν, καθ' ὅτι ἐνῶ ἐστρα- 15 τευμένοι, οἵτινες ἐπέτυχον ἐγγραφὴν εἰς Πανεπιστήμιον πρὸ τῆς 29.8.74 ἀπελύθησαν, οἱ ἐν λόγῳ αἰτηταὶ δὲν ἀπελύθησαν, ἐπὶ τῷ ὅτι ἡ ἐγγραφή των εἰς Πανεπιστήμιον ἔλαβε χώραν μετὰ τὴν 29.8.74.

3. Οἱ καθ' ὧν ἡ αἴτησις δὲν ἔλαβον ὑπ' ὄψιν των τὸ γεγονὸς 20 ὅτι οἱ αἰτηταί, τελοῦντες ἐν ὑπηρεσίᾳ, ἰδιαιτέρως δὲ κατὰ τὴν διάρκειαν ἐμπολέμου καταστάσεως ἐν Κύπρῳ, ἠδυνάτουν νὰ ἐξασφαλίσουν ἐγγραφὴν εἰς Πανεπιστήμιον πρὸ τῆς 29.8.74.

4. Οἱ καθ' ὧν ἡ αἴτησις δὲν ἔλαβον ὑπ' ὄψιν των τὸ γεγονὸς 25 ὅτι οἱ αἰτηταὶ θὰ ἀπελύοντο κατὰ τὴν 20.7.74, ὅτε ἔληγεν ἡ θητεία των, καὶ ὅτι βασιζόμενοι ἐπὶ τοῦ γεγονότος τούτου ἀνέμενον ἀπόλυσίν των δι' ἐγγραφὴν εἰς Πανεπιστήμιον, ὅτε ἐμεσολάβησεν ἡ Τουρκικὴ εἰσβολὴ ἕνεκα τῆς ὁποίας δὲν ἠδυνήθησαν νὰ ἐξασφαλίσουν ἐγγραφὴν εἰς 30 Πανεπιστήμιον.

5. Οἱ καθ' ὧν ἡ αἴτησις ἐνήργησαν κατὰ παράβασιν πάσης ἀρχῆς δικαίου, ὅταν ἀπεφάσισαν τὴν ἀπόλυσιν ὅσων εἶχον ἐπιτύχει ἐγγραφὴν εἰς Πανεπιστήμιον πρὸ τῆς 29.8.74 χωρὶς νὰ παράσχουν ἐκ τῶν προτέρων διευκολύνσεις εἰς 35 τοὺς αἰτητὰς διὰ τοιαύτην ἐγγραφήν.

Οἱ καθ' ὧν ἡ αἴτησις κατεχώρησαν ἔνστασιν κατὰ τῆς αἰτήσεως τῶν αἰτητῶν, τὰ δὲ γεγονότα πρὸς ἐνίσχυσιν τῆς ἐνστάσεως ἔχουν ὡς ἀκολούθως:

3. Οἱ αἰτηταὶ ὑπ' ἀριθ. 1, 2 καὶ 3 συνεπλήρωσαν εἰκοσιτετράμηνον θητείαν τὴν 20ὴν 'Ιουλίου, 1974, ὁ δὲ αἰτητὴς ὑπ' ἀριθ. 4 τὴν 21ην 'Ιουλίου, 1974.

4. Τὴν 20ὴν 'Ιουλίου, 1974, δυνάμει ἀποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου καὶ σχετικῆς προκηρύξεως τοῦ 'Υπουργοῦ τῶν 'Εσωτερικῶν, ἐκλήθησαν πρὸς ἐκπλήρωσιν ὑποχρεώσεως ἐφέδρου ἅπαντες οἱ στρατεύσιμοι ἀξιωματικοὶ καὶ ὁπλῖται τῆς 'Εθνικῆς Φρουρᾶς. 5

5. Κατὰ τὴν συνεδρίαν τῆς 19ης Σεπτεμβρίου, 1974, τὸ 'Υπουργικὸν Συμβούλιον διεπίστωσεν ὅτι "ἡ ἐν τῇ 'Εθνικῇ Φρουρᾷ ὑποχρέωσις ὑπηρεσίας τῶν μετὰ τὴν κανονικὴν λῆξιν τῆς θητείας αὐτῶν ἐξακολουθούντων νὰ ὑπηρετοῦν ἐν αὐτῇ στρατευσίμων εἶναι ὑποχρέωσις ὑπηρεσίας ἐφέδρου ὡς εἶναι ἡ ὑποχρέωσις ὑπηρεσίας τῶν ἐν αὐτῇ κληθέντων καὶ ὑπηρετούντων ἐφέδρων". 10 15

6. Δι' ἀποφάσεώς του ἡμερ. 29 Αὐγούστου, 1974, τὸ 'Υπουργικὸν Συμβούλιον ἀπέλυσε τοὺς κανονικῶς ὑπηρετήσαντας στρατευσίμους καὶ συμπληρώσαντας περίοδον θητείας πέραν τῶν εἰκοσιτεσσάρων μηνῶν, οἵτινες ἱκανοποίησαν τὸν 'Υπουργόν, ὅτι εἶχον ἐγγραφῇ εἰς Πανεπιστήμια ἢ 'Ανωτάτας Σχολὰς τοῦ ἐξωτερικοῦ 20

7. Οἱ αἰτηταὶ δὲν ἦσαν ἐγγεγραμμένοι φοιτηταὶ εἰς Πανεπιστήμιον ἢ 'Ανωτάτην Σχολὴν κατὰ τὴν 29ην Αὐγούστου, 1974.

'Εφ' ὅσον ἡ νομοθεσία καθιερώνει τὴν βασικὴν ἀρχὴν ἐφ' ἧς συγκροτεῖται ἡ ἄμυνα τῆς πατρίδος, ἤτοι τὴν καθολικὴν καὶ ὑποχρεωτικὴν ὑπηρεσίαν τῶν πολιτῶν τῆς Δημοκρατίας, αὕτη προφανῶς περιλαμβάνει παντὸς εἴδους, πρόσφορον διὰ τὸν σκοπὸν τοῦτον, προσωπικὴν ὑπηρεσίαν. 'Εντὸς ὅμως τοῦ πλαισίου τῆς καθολικῆς ὑποχρεώσεως ἡ νομοθεσία ἀναγνωρίζει καὶ δικαιώματα εἰς ἕκαστον στρατεύσιμον καὶ παρέχει εἰς αὐτὸν νόμιμα μέσα διὰ τὴν προστασίαν του, διότι ἡ ὅλη ἐκ τῆς στρατεύσεως σχέσις εἶναι σχέσις δημοσίου δικαίου, ἐπὶ τῆς ὁποίας ἰσχύουν αἱ ἀρχαὶ τῆς νομιμότητος τῆς ἐνεργείας τῆς διοικήσεως ("Ιδε Α. Ι. Σβώλου, Γ. Κ. Βλάχου "Τὸ Σύνταγμα τῆς 'Ελλάδος" Μέρος 1ον, Τόμος Α, σελὶς 264). Δεκτικὴ δὲ προσβολῆς εἶναι καὶ ἡ ἄρνησις ἢ καὶ ἡ παράλειψις τῆς διοικήσεως ὅπως διατάξῃ τὸν τερματισμὸν τῆς στρατιωτικῆς ὑποχρεώσεως (Σ. Ε. 81/1951). 25 30 35

Όταν λοιπὸν τὴν 20ὴν Ἰουλίου, 1974, ἤρξατο ἡ Τουρκικὴ εἰσβολὴ (ὅπως ἤδη ἀνέφερα), ἐκλήθησαν δι' ὑπηρεσίαν ἅπασαι αἱ τάξεις τῶν ἐφέδρων. Ἡ κλῆσις ἦτο γενικὴ δι' ὅλον τὸ Κράτος καὶ αὕτη ἐγένετο δι' ἐπανειλημμένων ραδιοφωνικῶν ἐκπομπῶν,
5 δεδομένου ὅτι ἦτο ἀδύνατος κατὰ τὴν ἡμέραν ἐκείνην λόγῳ τῆς ἐκρύθμου καταστάσεως οἱαδήποτε ἑτέρα γνωστοποίησις τῆς κλήσεως ταύτης. Εἶναι ἀξιοσημείωτον ὅτι, δυνάμει τοῦ ἄρθρου 16 τῶν Περὶ τῆς Ἐθνικῆς Φρουρᾶς Νόμων, "ἡ κλῆσις ἐφέδρων ἐνεργεῖται δι' ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου" χωρὶς νὰ
10 ἀπαιτῆται δημοσίευσις τῆς τοιαύτης ἀποφάσεως εἰς τὴν Ἐπίσημον Ἐφημερίδα τῆς Δημοκρατίας, ὡς εἰς τὰς περιπτώσεις τῆς κλήσεως δυνάμει τῶν ἄρθρων 6 καὶ 6 (α) (2), ἢ τῆς ἀπολύσεως στρατευσίμων δυνάμει τοῦ ἄρθρου 9 (1).

28η Αὐγούστου 1975

ΝΙΚΟΣ ΤΣΑΓΓΑΡΙΔΗΣ ΚΑΙ ΑΛΛΟΙ (ΑΡ. 2)

v.

ΔΗΜΟΚΡΑΤΙΑΣ (ΥΠΟΥΡΓΟΥ ΑΜΥΝΗΣ ΚΑΙ ΑΛΛΟΥ)

Χατζηαναστασίου, Δ.

Λαμβανομένων ὑπ' ὄψιν τῶν κατὰ τὴν ἡμερομηνίαν ἐκείνην
15 ὑφισταμένων συνθηκῶν, καὶ ἐν ὄψει τοῦ γεγονότος ὅτι οὐδεμία πλευρὰ ἠμφεσβήτησε τὴν νομιμότητα τῆς κλήσεως ἐφέδρων δὲν νομίζω ὅτι παρίσταται ἀνάγκη, διὰ τοὺς σκοποὺς τῆς παρούσης ὑποθέσεως, νὰ ἐκφράσω τὰς ἀπόψεις μου ἐπὶ τοῦ θέματος τούτου.

Ὅπως ἤδη ἀνέφερα, ἡ περίοδος θητείας ἑκάστου στρατευσίμου
20 διέπεται ὑπὸ τῶν σχετικῶν διατάξεων τῶν Περὶ Ἐθνικῆς Φρουρᾶς Νόμων καὶ ὑπὸ τῶν εἰς τὴν ειδικὴν περίπτωσιν ἐφαρμοζομένων ἀποφάσεων τοῦ Ὑπουργικοῦ Συμβουλίου. Ὡς ὑπέδειξα προηγουμένως, συμφώνως πρὸς τὸ ἄρθρον 5 (1), ἡ περίοδος θητείας τῶν αἰτητῶν ἦτο δύο ἐτῶν, μετὰ τὴν παρέλευσιν τῆς ὁποίας,
25 οὗτοι ὤφειλον νὰ ἀπολυθῶσιν, ὡς ἐκπληρώσαντες τὴν κατὰ τὸ ἄρθρον 4 (2) ὑποχρέωσιν θητείας των. Δύναται ὅμως νὰ λεχθῇ ὅτι, λόγῳ τῆς δημιουργηθείσης ἐκρύθμου καταστάσεως, οἱ αἰτηταὶ οὗτοι δὲν ἀπελύθησαν καὶ ἐξακολουθοῦν τὴν ὑπηρεσίαν των, προφανῶς πρὸς ἐκτέλεσιν τῆς ὑποχρεώσεώς των ὡς ἐφέδρων. Τὴν 29ην
30 Αὐγούστου, 1974, τὸ Ὑπουργικὸν Συμβούλιον, ἔχον ὑπ' ὄψιν τὰς προνοίας τῆς ἐπιφυλάξεως τοῦ ἄρθρου 5 (1) διὰ τῆς ἀποφάσεώς του ὑπ' ἀριθμὸν 13453, δημοσιευθείσης εἰς τὴν Ἐπίσημον Ἐφημερίδα τῆς Δημοκρατίας εἰς τὸ 4ον Παράρτημα τῆς 30ῆς Αὐγούστου, 1974, ὑπ' ἀρ. 1127, καὶ ἀσκοῦν τὰς ἐν αὐτῷ χορηγουμένας ἐξουσίας
35 ὑπὸ τοῦ ἄρθρου 9 (1) τῶν Περὶ Ἐθνικῆς Φρουρᾶς Νόμων 1964–1968, ἀπεφάσισε τὴν ἀπόλυσιν ἐφέδρων καὶ ἄλλων στρατευσίμων. Ἡ ἀπόφασις ἐκείνη ἔχει ὡς ἀκολούθως:

" 1. Τὸ Ὑπουργικὸν Συμβούλιον, ἀσκοῦν τὰς εἰς αὐτὸ χορηγουμένας ἐξουσίας ὑπὸ τοῦ ἄρθρου 9 (1) τῶν Περὶ τῆς
40 Ἐθνικῆς Φρουρᾶς Νόμων τοῦ 1964 ἕως 1968, διὰ τῆς παρούσης ἀποφάσεως ἀπολύει:

(α) ἅπαντας τοὺς ἐφέδρους τῶν κλάσεων 1958 ἕως 1964, ἀμφοτέρων συμπεριλαμβανομένων·

(β) ἅπαντας τοὺς ἐφέδρους, τοὺς φοιτῶντας εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ·

(γ) ἅπαντας τοὺς ἐφέδρους, τοὺς ἀποδεδειγμένως διαμένοντας μονίμως εἰς τὸ ἐξωτερικόν· 5

(δ) τοὺς κανονικῶς ὑπηρετοῦντας στρατευσίμους καὶ συμπληρώσαντας περίοδον θητείας πέραν τῶν εἰκοσιτεσσάρων μηνῶν, τοὺς ἱκανοποιοῦντας τὸν Ὑπουργὸν ὅτι:

(ι) ἔχουν ἐγγραφῆ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ. 10

(ιι) ἔχουν τύχει, κατόπιν ἐπιλογῆς ὑπὸ Ἐπιτροπῆς τυγχανούσης τῆς ἐγκρίσεως τοῦ Ὑπουργικοῦ Συμβουλίου, καὶ διὰ περίοδον οὐχὶ μικροτέραν ἑνὸς ἀκαδημαϊκοῦ ἔτους, ὑποτροφίας διὰ πανεπιστημιακὰς ἢ 15 μεταπτυχιακὰς σπουδὰς εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς ἢ Ἱδρύματα ἰσότιμα πρὸς Πανεπιστήμια εἰς τὸ ἐξωτερικόν, ἵνα οὗτοι δυνηθῶσι νὰ φοιτήσωσιν εἰς αὐτὰ κατὰ τὸ προσεχὲς ἀκαδημαϊκὸν ἔτος 1974–1975. 20

2. Ὁ χρόνος ἀπολύσεως τῶν ὑπὸ στοιχεῖα (β) καὶ (δ) (ι) καὶ (ιι) ἀνωτέρω θὰ καθορισθῇ ὑπὸ τοῦ Ὑπουργοῦ ἀναλόγως τοῦ χρόνου ἐνάρξεως τοῦ ἀκαδημαϊκοῦ ἔτους εἰς ἑκάστην περίπτωσιν".

Θὰ ἦτο χρήσιμον νὰ τονισθῇ ὅτι παρ' ὅλον ὅτι τὸ Ὑπουργικὸν 25 Συμβούλιον εἶχεν ἐνώπιόν του Πρότασιν τοῦ Ὑπουργοῦ Ἐσωτερικῶν δι ἀπόλυσιν ἐφέδρων καὶ ἄλλων στρατευσίμων, ἐν τούτοις οὐδαμοῦ γίνεται μνεία εἰς τὴν ἐν λόγῳ Πρότασιν διὰ τὴν ἀπόλυσιν στρατευσίμων, οἱ ὁποῖοι εἶχον ἐγγραφῆ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολάς. Θὰ ἦτο δὲ ὀρθὸν νὰ τονισθῇ ὅτι τὸ Ὑπουργικὸν 30 Συμβούλιον ἔχον ὑπ' ὄψιν ὅτι ἡ μόρφωσις εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς ἀποτελεῖ λόγους δημοσίου συμφέροντος ἀπεφάσισε νὰ ἀπολύσῃ καὶ τοὺς στρατευσίμους ἐκείνους, οἵτινες εἶχον ἐγγραφῆ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ παρ' ὅλον ὅτι ἡ ἔκρυθμος κατάστασις ἐσυνεχίζετο. 35

Κατὰ τὴν γνώμην μου ἡ ἀπόφασις αὕτη ἐνισχύει τὴν θέσιν τὴν ὁποίαν ἐξέθεσα προηγουμένως, ἤτοι τὸ Ὑπουργικὸν Συμβούλιον ἀπέδιδε καὶ ἀποδίδει ἰδιαιτέραν σημασίαν εἰς τὸ θέμα τῆς Ἀνω-

τάτης 'Εκπαιδεύσεως καὶ τοῦτο ἐμφανίζεται σαφέστατα εἰς τὴν νέαν ἀπόφασίν του τῆς 10.9.1974. 'Η ἀπόφασις αὕτη, ἡ ὁποία ἐδημοσιεύθη εἰς τὸ Παράρτημα 4ον τῆς 'Επισήμου 'Εφημερίδος τῆς Δημοκρατίας ὑπ' ἀρ. 1135 τῆς 27ης Σεπτεμβρίου, 1974 ἔχει ὡς
5 ἀκολούθως:

" Τὸ Συμβούλιον, ἀσκοῦν τὰς εἰς αὐτὸ χορηγουμένας ἐξουσίας ὑπὸ τοῦ ἄρθρου 9 (1) τῶν περὶ τῆς 'Εθνικῆς Φρουρᾶς Νόμων τοῦ 1964–1968, διὰ τῆς παρούσης ἀποφάσεως ἀπολύει:

(α) ἅπαντας τοὺς ἐφέδρους τοὺς ἤδη φοιτῶντας εἰς Σχολὰς
10 'Ανωτέρας 'Εκπαιδεύσεως 'Ελλάδος, ὡς τὰ Κέντρα 'Ανωτέρας Τεχνικῆς 'Εκπαιδεύσεως, τὴν 'Ανωτέραν Σχολὴν 'Υπομηχανικῶν, τὴν Σ.Β.Ι.Ε., τὴν Σιβιτανίδειον, τὰς Παιδαγωγικὰς 'Ακαδημίας 'Ελλάδος, ἐγκεκριμένας Σχολὰς 'Ανωτέρας 'Εκπαιδεύσεως 'Ελλάδος κ.λ.π.

15 'Αποφασίζεται ὅπως αἱ ἀντίστοιχοι Σχολαὶ τῆς 'Αγγλίας καὶ ἄλλων χωρῶν θεωρῶνται ὡς Σχολαὶ 'Ανωτέρας 'Εκπαιδεύσεως διὰ τοὺς σκοποὺς τῆς ὑπ' ἀρ. 13453 ἀποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου".

'Εν συνεχείᾳ, τὸ 'Υπουργικὸν Συμβούλιον διέταξε τὴν ἀπόλυσιν
20 ἀριθμοῦ στρατευσίμων πρὸς φοίτησιν εἰς τὰς Δημοσίας Σχολὰς 'Εμπορικοῦ Ναυτικοῦ 'Ελλάδος, καὶ ἡ ἀπόφασις ὑπ' ἀρ. 13528 ἡμερομηνίας 26.9.1974 ἔχει ὡς ἀκολούθως:

" Τὸ Συμβούλιον, ἀσκοῦν τὰς εἰς αὐτὸ χορηγουμένας ἐξουσίας ὑπὸ τοῦ ἄρθρου 9 (1) τῶν περὶ τῆς 'Εθνικῆς Φρουρᾶς Νόμων
25 τοῦ 1964 ἕως 1968, διὰ τῆς παρούσης ἀποφάσεως ἀπολύει τοὺς ἀκολούθους στρατευσίμους, οἵτινες ἐπελέγησαν πρὸς φοίτησιν εἰς τὰς Δημοσίας Σχολὰς 'Εμπορικοῦ Ναυτικοῦ 'Ελλάδος καὶ ἔχουν ἤδη συμπληρώσει περίοδον θητείας εἰς τὴν 'Εθνικὴν Φρουρὰν πέραν τῶν 24 μηνῶν".

30 Εἶναι ἐπιβεβλημένον ἐπίσης νὰ τονίσω ὅτι ἐδημοσιεύθη εἰς τὴν 'Επίσημον 'Εφημερίδα τῆς Δημοκρατίας ὁ Νόμος 49/1974, καὶ ὁ ὁποῖος ἐτέθη ἐν ἰσχύϊ ἀπὸ τῆς 1ης Σεπτεμβρίου 1974, ἐπιβάλλων προσωρινοὺς περιορισμοὺς εἰς τὸ δικαίωμα ἐγκαταλείψεως μονίμως ἢ προσωρινῶς τοῦ ἐδάφους τῆς Δημοκρατίας.

35 Συμφώνως πρὸς τὰς προνοίας τοῦ ἄρθρου 4, ὁ 'Υπουργὸς χορηγεῖ ἄδειαν ἐξόδου εἰς τοὺς ἀκολούθους πολίτας τῆς Δημοκρατίας:

"(θ) εἰς ἐκπληρώσαντας τὴν ὑποχρέωσιν ὑπηρεσίας ἐν τῇ 'Εθνικῇ Φρουρᾷ καὶ ἀποδεδειγμένως τυχόντας εἰσδοχῆς

ἢ φοιτῶντας εἰς πανεπιστήμια ἢ σχολὰς ἀνωτάτης ἢ ἀνωτέρας ἐκπαιδεύσεως εἰς τὸ ἐξωτερικόν".

Ἐκ τῆς ἀναφορᾶς μου εἰς τὰς δύο ἀποφάσεις καὶ εἰς τὸν νόμον 49/74, ὁ ὁποῖος ἐδημοσιεύθη εἰς τὴν Ἐπίσημον Ἐφημερίδα τῆς Δημοκρατίας, Παράρτημα 1ον, τὴν 1ην Ὀκτωβρίου, 1974, δύναμαι νομίζω νὰ καταλήξω εἰς τὸ ἀσφαλὲς συμπέρασμα, ὅτι ὁ σκοπὸς ἢ καὶ ἡ πρόθεσις τοῦ Ὑπουργικοῦ Συμβουλίου ἦτο ἡ προώθησις τοῦ ἰδεώδους τῆς ἀνωτάτης ἐκπαιδεύσεως. Εἶναι ἐπίσης χαρακτηριστικὸν ὅτι οὐδεμία μνεία γίνεται περὶ ἡμερομηνίας ἐγγραφῆς, εἰδικώτερον δὲ εἰς τὴν παράγραφον (θ) τοῦ ἄρθρου 4 γίνεται μνεία μόνον εἰς τοὺς "τυχόντας εἰσδοχῆς ἢ φοιτῶντας εἰς Πανεπιστήμια" χωρὶς νὰ ὁρίζηται ἡμερομηνία εἰσδοχῆς, παρ' ὅλον ὅτι ἡ ἀπόφασις τοῦ Ὑπουργικοῦ Συμβουλίου ἀναφέρεται εἰς ὅσους ἔχουν ἀποδεδειγμένως ἐγγραφῆ.

Εἶμαι τῆς γνώμης ὅτι ἔχω παραθέσει ἀρκετὰ στοιχεῖα διὰ νὰ ἀποδείξω, ὅτι τὸ Ὑπουργικὸν Συμβούλιον οὐδεμίαν πρόθεσιν εἶχε διὰ τῆς ἀποφάσεώς του ἡμερομηνίας 29.8.1974, νὰ εὐεργετήση μόνον ἐκείνους τοὺς στρατευσίμους οἱ ὁποῖοι εἶχον τὸ προνόμιον νὰ ἐγγραφοῦν εἰς ἀνωτάτας σχολὰς ἐνωρίτερον, ἐν ἀντιθέσει πρὸς ἐκείνους, οἱ ὁποῖοι συνεχίζουν νὰ ὑπηρετοῦν καὶ πέραν τῶν εἰκοσιτεσσάρων μηνῶν τὴν πατρίδα των κατὰ τὴν διάρκειαν τῆς κρισιμωτέρας περιόδου αὐτῆς.

Εἶναι ἀναγκαῖον νὰ τονίσω, ὅτι τὸ Ἀνώτατον Δικαστήριον "κέκτηται ἀποκλειστικὴν δικαιοδοσίαν" συμφώνως πρὸς τὸ ἄρθρον 146 τοῦ Συντάγματος νὰ ἀποφασίζη ὁριστικῶς καὶ ἀμετακλήτως ἐπὶ πάσης προσφυγῆς ὑποβαλλομένης κατ' ἀποφάσεως, πράξεως ἢ παραλείψεως οἱουδήποτε ὀργάνου, ἀρχῆς ἢ προσώπου ἀσκούντων ἐκτελεστικὴν ἢ διοικητικὴν λειτουργίαν ἐπὶ τῷ λόγῳ ὅτι ἡ ἀπόφασις, πρᾶξις ἢ παράλειψις αὕτη εἶναι ἀντίθετος πρὸς τὰς διατάξεις τοῦ Συντάγματος ἢ τὸν νόμον ἢ ἐγένετο καθ' ὑπέρβασιν ἢ κατάχρησιν τῆς ἐξουσίας τῆς ἐμπεπιστευμένης εἰς τὸ ὄργανον ἢ τὴν ἀρχὴν ἢ τὸ πρόσωπον τοῦτο.

Τὸ πρωτόδικον δικαστήριον, ἀφοῦ ἔλαβεν ὑπ' ὄψιν κατὰ τὴν διάρκειαν τῆς ἀκροαματικῆς διαδικασίας τὰς ἀγορεύσεις τῶν συνηγόρων τῶν αἰτητῶν καὶ τῶν καθ' ὧν ἡ αἴτησις, ἀπέρριψε τὴν προσφυγὴν διότι κατὰ τὴν γνώμην του, οἱ καθ' ὧν ἡ αἴτησις δὲν ἐνήργησαν καθ' ὑπέρβασιν ἢ κατάχρησιν ἐξουσίας μὴ ἀπολύσαντες τοὺς αἰτητὰς ἐκ τῶν τάξεων τῆς Ἐθνικῆς Φρουρᾶς.

Ἡ παροῦσα ἔφεσις, τηρουμένου παντὸς δικαστικοῦ κανονισμοῦ, ἐγένετο ἐντὸς τῶν προνοιῶν τοῦ ἄρθρου 11 (1) τοῦ Περὶ Ἀπονομῆς

τῆς Δικαιοσύνης (Ποικίλαι Διατάξεις) Νόμου τοῦ 1964 ἐναντίον τῆς ἀποφάσεως ἑνὸς ἐκ τῶν δικαστῶν τοῦ 'Ανωτάτου Δικαστηρίου, διὰ τῆς ὁποίας ἀπερρίφθη ἡ προσφυγὴ τῶν ἐφεσειόντων κατὰ τῆς ἀρνήσεως ἢ παραλείψεως τῶν ἐφεσιβλήτων ὅπως ἀπολύσωσι τοὺς
5 αἰτητὰς ἐκ τῶν τάξεων τῆς 'Εθνικῆς Φρουρᾶς.

28η Αὐγούστου 1975
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ΝΙΚΟΣ ΤΣΑΓΓΑΡΙΔΗΣ ΚΑΙ ΑΛΛΟΙ (ΑΡ. 2)
v.
ΔΗΜΟΚΡΑΤΙΑΣ (ΥΠΟΥΡΓΟΥ ΑΜΥΝΗΣ ΚΑΙ ΑΛΛΟΥ)
—
Χατζηαναστασίου. Δ.

'Ενώπιον τῆς ὁλομελείας τοῦ 'Ανωτάτου Δικαστηρίου ὑπεστηρίχθη ὑπὸ τοῦ συνηγόρου τῶν ἐφεσειόντων, ὅτι ἡ ὀρθὴ ἑρμηνεία τῆς ἀποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου ἐξυπακούει τὸ δικαίωμα ἀπολύσεως ἁπάντων τῶν στρατευσίμων, οἵτινες θὰ ἱκα-
10 νοποίουν τὸν 'Υπουργὸν ὅτι εἶχον ἐγγραφῆ εἰς Πανεπιστήμια ἢ 'Ανωτάτας Σχολὰς τοῦ ἐξωτερικοῦ, καθ' οἱονδήποτε χρόνον μέχρι τῆς λήψεως ἀποφάσεως περὶ τῆς ἀπολύσεώς των. Περαιτέρω, ἐτονίσθη ὅτι ἡ ἀπόφασις τοῦ 'Υπουργικοῦ Συμβουλίου δὲν ὁρίζει ἡμερομηνίαν ἀπολύσεως καὶ δὲν ἀναφέρεται μόνον εἰς τοὺς πρὸ τῆς
15 ἡμερομηνίας ἐκδόσεως τῆς ὡς ἄνω ἀποφάσεως ἐγγραφέντας στρατευσίμους. 'Αντιθέτως, ὑπεστηρίχθη ἐκ μέρους τοῦ συνηγόρου τῶν ἐφεσιβλήτων ὅτι ἡ ἀπόφασις, ὀρθῶς ἑρμηνευομένη ἐντὸς τῶν κανόνων τῆς γραμματικῆς ἑρμηνείας, καὶ τῆς σημασίας τῶν λέξεων καλύπτει μόνον ἐκείνους τοὺς στρατευσίμους, οἱ ὁποῖοι εἶχον ἤδη
20 ἐγγραφῆ εἰς Πανεπιστήμια μέχρι τῆς 29ης Αὐγούστου 1974.

'Ελέχθη εἰς σωρείαν ἀποφάσεων ὅτι ὁ σκοπὸς τῆς ἑρμηνείας τοῦ νόμου ἢ καὶ οἱουδήποτε γραπτοῦ κειμένου εἶναι νὰ μᾶς ὁδηγήσῃ εἰς τὸ νὰ κατανοήσωμεν τὸ νόημα τοῦ νόμου ἢ τοῦ γραπτοῦ κειμένου. Θὰ ἦτο ὅμως ὀρθὸν νὰ τονισθῇ, ὅτι εἰς τὴν παροῦσαν
25 περίπτωσιν φροντίζομεν νὰ συλλάβωμεν διὰ τῶν κανόνων τῆς γραμματικῆς καὶ τῆς φυσικῆς σημασίας τῶν λέξεων τὸ ἀληθὲς νόημα τῆς ἀποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου.

Κατὰ τὴν γνώμην μου, ὅμως, τὸ νόημα τὸ ὁποῖον μᾶς ἀποδίδει ἡ γραμματικὴ ἑρμηνεία δὲν εἶναι πάντοτε ἀσφαλές, ὅπως φαίνεται
30 καὶ εἰς ἀποφάσεις 'Αγγλικῶν Δικαστηρίων, τὰς ὁποίας θὰ ἀναφέρω εἰς τὴν ἀπόφασίν μου. Συμφώνως πρὸς τὸν συγγραφέα Odgers, ὁ ὁποῖος ἀσχολεῖται μὲ τὴν ἑρμηνείαν νομικῶν ἐγγράφων καὶ νομοθετημάτων, 5η Ἔκδοσις, ὑπάρχουν τρεῖς μέθοδοι ἑρμηνείας, τὰς ὁποίας δύνανται νὰ υἱοθετοῦν τὰ 'Αγγλικὰ Δικαστήρια. Μία ἐκ
35 τῶν μεθόδων τούτων εἶναι ἡ γνωστὴ ὡς "literal", ἤτοι ἡ κυριολεκτικὴ ἢ κατὰ γράμμα ἑρμηνεία, ἡ ὁποία ἀποβλέπει, ὡς ἀνέφερα ἀνωτέρω, εἰς τὴν εὕρεσιν καὶ ἀπόδοσιν τοῦ ἀληθοῦς νοήματος τοῦ δικαίου. Εἰς τὴν ὑπόθεσιν Grey v. Pearson [1857] 6 H.L. Cas. 61, ὁ Λόρδος Wensleydale ἐτόνισεν εἰς τὴν Βουλὴν τῶν Λόρδων
40 ὅτι: " Κατὰ τὴν ἑρμηνείαν διαθηκῶν, νόμων καὶ ἐγγράφων, πρέπει νὰ ἀκολουθῆται πιστῶς ἡ γραμματικὴ καὶ συνήθης ἔννοια τῶν λέξεων (grammatical and ordinary sense of the words), ἐκτὸς ἂν

τοῦτο θὰ ὡδήγει εἰς ἀσάφειαν, ἀντίθεσιν ἢ ἀσυνέπειαν πρὸς τὸ ὑπόλοιπον κείμενον· ὅτι θὰ ἠδύνατο νὰ τροποποιηθῇ ἡ γραμματικὴ καὶ συνήθης ἔννοια τῶν λέξεων, διὰ νὰ ἀποφευχθῇ ἡ ἀσάφεια καὶ ἀσυνέπεια αὕτη· ὅμως, οὐδὲν πέραν τούτου".

Ὁ χρυσοῦς οὗτος κανών, ὡς ἐκλήθη ὑπὸ τοῦ Ἀρχιδικαστοῦ Jervis εἰς τὴν ὑπόθεσιν Mattison v. Hart [1854] 14 C.B. 357, σελ. 385, ἐπεδοκιμάσθη καὶ ὑπὸ τοῦ Λόρδου Blackburn εἰς τὴν ὑπόθεσιν Caledonian Ry. Co. v. North British Ry. Co. [1881] 6 App. Cas. 114, εἰπόντος (σ. 131): "Συμφωνῶ πλήρως πρὸς τοῦτο, ἀλλ' εἰς τὰς περιπτώσεις εἰς τὰς ὁποίας ὑπάρχει πραγματικὴ δυσκολία, τοῦτο δὲν βοηθεῖ πολύ· διότι, αἱ ὑποθέσεις αἱ ὁποῖαι παρουσιάζουν πραγματικὴν δυσκολίαν εἶναι ἐκεῖναι, εἰς τὰς ὁποίας ἀμφισβητεῖται ἡ γραμματικὴ καὶ συνήθης ἔννοια τῶν χρησιμοποιουμένων, ἐν ἀναφορᾷ πρὸς τὸ κείμενον, λέξεων. Εἴς τινας, δυνατὸν νὰ φανῇ ὅτι τὸ πλεῖστον ποὺ ἠμπορεῖ νὰ λεχθῇ εἶναι ὅτι ἡ ἔννοια τῶν λέξεων πιθανὸν νὰ εἶναι ἐκείνη ποὺ ἰσχυρίζεται ἡ ἄλλη πλευρά, καὶ ὅτι ἡ ἀσυνέπεια καὶ ἡ ἀντίθεσις εἶναι τόσον μεγάλη, ὥστε νὰ πρέπει νὰ γίνῃ μεγάλη προέκτασις τῆς ἐννοίας διὰ νὰ ἀποφευχθῇ ἡ ἀσυνέπεια καὶ ἡ ἀντίθεσις αὕτη· καὶ ὅτι, ἐκεῖνο ποὺ χρειάζεται διὰ νὰ ἀποφευχθῇ αὕτη, εἶναι μία πολὺ μικρὰ ἐπέκτασις τῆς ἐννοίας ἢ ἀπολύτως οὐδεμία. Εἰς ἄλλους, ὅμως, δυνατὸν νὰ φανῇ ὅτι αἱ λέξεις εἶναι ἀπολύτως σαφεῖς· ὅτι δὲν ἠμποροῦν αὗται νὰ ἔχουν οἱανδήποτε ἄλλην ἔννοιαν, καὶ ὅτι τυχὸν ἀντικατάστασις τῆς ἐννοίας ταύτης δι' οἱασδήποτε ἄλλης θὰ ἐσήμαινεν οὐχὶ ἑρμηνείαν τῶν χρησιμοποιηθεισῶν λέξεων, ἀλλὰ τὴν δημιουργίαν ἑνὸς ἐγγράφου (instrument) διὰ τοὺς διαδίκους· καὶ ὅτι ἡ ὑποτιθεμένη ἀσυνέπεια ἢ ἀντίθεσις ἀποτελεῖ ἴσως ταλαιπωρίαν — ὅπερ θὰ ἦτο ἴσως προτιμότερον νὰ ἀπεφεύγετο. Μὲ αὐτό, ὅμως, δὲν ἔχομεν τὴν δύναμιν νὰ ἀσχοληθῶμεν".

Βεβαίως, ἐὰν τὸ Δικαστήριον δὲν δύναται νὰ ἀποδεχθῇ τὴν ἐπιχειρηματολογίαν τοῦ συνηγόρου ὅτι ὑπάρχει ἀντίθεσις καὶ ἀσυνέπεια, ὁ κανὼν εἰς τὸν ὁποῖον ἔχω ἀναφερθῆ δὲν δύναται νὰ ἐφαρμοσθῇ. Θὰ ἦτο ἐπίσης χρήσιμον νὰ ἀναφέρω, ὅτι αἱ λέξεις τὰς ὁποίας ἐχρησιμοποίησεν ὁ Λόρδος Blackburn εἶχον ἀπήχησιν καὶ εἰς ἄλλας ὑποθέσεις ἐνώπιον δικαστηρίων. Ἡ ὑπόθεσις Vacher & Sons Ltd. v. The London Society of Compositors [1913] A.C. 107 εἶναι παράδειγμα χρησιμοποιήσεως καὶ τῶν τριῶν μεθόδων προσεγγίσεως τοῦ θέματος ἑρμηνείας. Εἰς τὴν ὑπόθεσιν αὐτὴν ὁ Λόρδος Macnaghten υἱοθέτησε τὸν χρυσοῦν κανόνα ἀπὸ τὴν ὑπόθεσιν Grey v. Pearson (supra). Ὁ Λόρδος Atkinson υἱοθέτησε τὴν κυριολεκτικὴν προσέγγισιν καὶ τὴν ὑπόθεσιν Cooke v. Charles A. Vogeler Company [1901] A.C. 102 σελ. 107· ἐνῶ ὁ

Λόρδος Moulton συνεζήτησε τὸ ἱστορικὸν τοῦ νόμου καὶ ἐφήρμοσε τὴν γνωστὴν ὡς mischief method.

Πρὸς κατανόησιν τῶν δυσκολιῶν, τὰς ὁποίας ἐμφανίζουν οἱ ἑρμηνευτικοὶ κανόνες, ἀναφέρομεν τὴν ὑπόθεσιν Ellerman Lines 5 Ltd. v. Murray [1931] A.C. 126, ἡ ὁποία παρουσιάζει τὰς διϊσταμένας ἀπόψεις τῶν δικαστῶν ἐπὶ τοῦ θέματος τούτου. Οἱ Ἐφέται Scrutton καὶ Greer ἦσαν τῆς γνώμης ὅτι τὸ ἄρθρον 1 τοῦ Περὶ Ἐμπορικῆς Ναυτιλίας Νόμου τοῦ 1925 ἦτο ἀπολύτως σαφὲς καὶ ἠρνήθησαν διὰ σκοποὺς ἑρμηνείας νὰ χρησιμοποιήσουν τὸ προοί- 10 μιον τοῦ νόμου. Ὁ δικαστὴς Slesser, διαφωνῶν, παρέθεσεν ἀπόσπασμα τοῦ Ἀρχιδικαστοῦ Dyer διὰ τοὺς σκοποὺς τῆς χρησιμοποιήσεως τοῦ προοιμίου καὶ ἐστηρίχθη εἰς τὸν γνωστὸν κανόνα ἑρμηνείας mischief. Εἰς τὴν Βουλὴν τῶν Λόρδων, ὁ Λόρδος Dunedin ἦτο τῆς γνώμης ὅτι ὁ νόμος ἔπρεπε νὰ ἑρμηνευθῇ ὡς 15 εἶχε καὶ ὅτι δὲν περιεῖχεν ἀσάφειαν· ὁ Λόρδος Blanesburgh ἐστηρίχθη διὰ σκοποὺς ἑρμηνείας εἰς τὴν μέθοδον τοῦ σκοποῦ τοῦ νόμου (τὸν κανόνα ἑρμηνείας mischief) ἐνῶ ὁ Λόρδος MacMillan ἦτο τῆς γνώμης ὅτι ὁ νόμος δὲν περιεῖχεν ἀσάφειαν καί, ὡς ἐκ τούτου, δὲν ἐχρειάζετο νὰ ἀνατρέξῃ εἰς ἐξωγενῆ βοηθήματα, ὡς ἦτο τὸ 20 προοίμιον.

Ἡ ἐπισκόπησις τῆς νομολογίας καὶ ἡ ἀναφορά μου εἰς τοὺς ἑρμηνευτικοὺς κανόνας ἐγένετο διὰ νὰ ἀποδείξω τὰς πολλαπλὰς δυσκολίας, τὰς ὁποίας ἀντιμετωπίζουν οἱ δικασταὶ κατὰ τὴν ἐφαρμογὴν τῶν ἑρμηνευτικῶν κανόνων εἰς ἑκάστην περίπτωσιν.

25 Κατ' ἀρχήν, ὀφείλω νὰ τονίσω ὅτι ἡ διοικητικὴ πρᾶξις εἶναι, ὡς ἔχει πλειστάκις λεχθῇ, δήλωσις βουλήσεως. Διὰ νὰ ἀποκτήσῃ τὴν δύναμιν πρὸς προαγωγὴν ἐννόμων ἀποτελεσμάτων, ἡ βούλησις αὕτη ὀφείλει νὰ παύσῃ νὰ ἀποτελῇ "ἴντερνουμ", ἤτοι ὀφείλει νὰ δηλωθῇ, ἡ δὲ ἰσχὺς τῆς διοικητικῆς πράξεως ἄρχεται ἀπὸ τῆς 30 δημοσιεύσεως αὐτῆς. Κατὰ κανόνα, αἱ διοικητικαὶ πράξεις ἰσχύουν ἀπὸ τῆς ἐκδόσεώς των καὶ δὲν ἔχουν ἀναδρομικὴν δύναμιν. Συνεπῶς, δὲν ἐφαρμόζονται ἐπὶ σχέσεων δημιουργηθεισῶν πρὸ τῆς ἐκδόσεώς των. Ἡ ἀρχὴ αὕτη ἰσχύει ἐπὶ ἀτομικῶν καὶ κανονιστικῶν πράξεων (749/33, 1735/53, 452/33, 1645/55).

35 Ἡ ὡς ἄνω ἀρχὴ τῆς μὴ ἀναδρομικότητος τῶν διοικητικῶν πράξεων δικαιολογεῖται ἐκ τοῦ ὅτι ἡ ἁρμοδιότης τῶν διοικητικῶν ὀργάνων δέον ν' ἀσκῆται ἐν ὄψει τῆς παρούσης ἑκάστοτε νομικῆς καὶ πραγματικῆς καταστάσεως: 164/43.

Θὰ ἦτο χρήσιμον νὰ ἐπαναλάβω, ὅτι: "Ο κανὼν περὶ τῆς 40 διοικητικῆς πράξεως καθορίζει ἐπίσης τὸ χρονικὸν σημεῖον ἀπὸ

τοῦ ὁποίου ἡ διοικητικὴ πρᾶξις εἶναι ἱκανὴ ἵνα ἐπιφέρῃ ἐν τῷ νομικῷ κόσμῳ τὴν ἀντίστοιχον πρὸς τὸ περιεχόμενον αὐτῆς μεταβολήν, ἤτοι, τὸ χρονικὸν σημεῖον τῆς ἐνάρξεως τῆς τυπικῆς ἰσχύος τῆς διοικητικῆς πράξεως. Διάφορον ὅμως εἶναι τὸ ζήτημα τῆς ἐν τῷ χρόνῳ ἐκτάσεως, ἣν δύναται νὰ ἔχῃ ἡ μεταβολὴ αὕτη, ἤτοι τὸ ζήτημα τοῦ καθορισμοῦ τῶν χρονικῶν ὁρίων, ἐντὸς τῶν ὁποίων δύνανται νὰ ἐκταθῶσιν, ἤτοι νὰ ἄρξωνται καὶ νὰ τερματισθῶσι τὰ ἔννομα ἀποτελέσματα τῆς πράξεως. Τοῦτο ἀναφέρεται εἰς τὴν ἔναρξιν καὶ τὴν λῆξιν τῆς οὐσιαστικῆς ἰσχύος τῆς διοικητικῆς πράξεως. Ὡς πρὸς τὴν ἐπέλευσιν, ἢ τὴν ἔναρξιν τῶν ἐννόμων ἀποτελεσμάτων τῆς πράξεως παρατηροῦμεν ὅτι αὕτη ὀφείλει κατ' ἀρχὴν νὰ συμπίπτῃ πρὸς τὴν ἔναρξιν τῆς τυπικῆς ἰσχύος αὐτῆς. Οὐχὶ ἧττον εἶναι δυνατόν, ἡ ἐπέλευσις τῶν ἀποτελεσμάτων τῆς πράξεως νὰ μετατεθῇ χρονικῶς εἴτε πρὸς τὸ μέλλον εἴτε πρὸς τὸ παρελθόν. Πρὸς τὸ μέλλον μετατίθεται ἡ ἐπέλευσις τῶν ἐννόμων ἀποτελεσμάτων τῆς πράξεως ὁσάκις προσετέθη ἀναβλητικὴ αἵρεσις ἢ προθεσμία. Πρὸς τὸ παρελθὸν δέ, ὁσάκις ἡ πρᾶξις ὡπλίσθη διὰ δυνάμεως ἀναδρομικῆς". (Βλ. Στασινοπούλλου Δίκαιον Διοικητικῶν Πράξεων 1951, σελ. 368).

Εἶναι ἐπίσης γνωστόν, ὅτι ἐπὶ πράξεων ἀφιεμένων εἰς τὴν διακριτικὴν ἐξουσίαν τῆς Διοικήσεως, δύνανται μὲν νὰ τίθενται πρόσθετοι ὁρισμοί, ἤτοι αἱρέσεις, προθεσμίαι καὶ ὅροι συνάδοντες πρὸς τὸν σκοπὸν τοῦ νόμου, ἀλλὰ δὲν δύναται νὰ ἀσκῆται ἡ διακριτικὴ ἐξουσία τῆς διοικήσεως ὑπὸ αἵρεσιν (Σ.Ε. 1229/59, Καραγιάννης ν. Δημοκρατία (1974) 3 C.L.R. 420).

Ἐπανερχόμενος εἰς τὴν προκειμένην περίπτωσιν καὶ ἐν ὄψει τῶν ἀνωτέρω ἐκτεθεισῶν διαπιστώσεων, ἐπιθυμῶ νὰ παρατηρήσω ὅτι, παρὰ τὸ γεγονὸς ὅτι ἡ ἀπόφασις τοῦ Ὑπουργικοῦ Συμβουλίου ἐτέθη ἐν ἰσχύϊ ἀπὸ τῆς ἡμερομηνίας δημοσιεύσεώς της εἰς τὴν Ἐπίσημον Ἐφημερίδα τῆς Κυβερνήσεως, ἤτοι ἀπὸ τῆς 30ῆς Αὐγούστου 1974, ἐν τούτοις αὕτη δὲν παρήγαγεν ὅλα τὰ νομικὰ ἀποτελέσματα ἀπὸ τῆς ἰδίας ἐκείνης ἡμερομηνίας. Τὰ νομικὰ δὲ ταῦτα ἀποτελέσματα, ἐν σχέσει μὲ τὰς ὑποπαραγράφους β' καὶ δ' τῆς παραγράφου 1, ἤτοι:

(α) (ἀπολύει) ἅπαντας τοὺς ἐφέδρους τῶν κλάσεων 1958 ἕως 1964 ἀμφοτέρων συμπεριλαμβανομένων, καὶ

(β) (ἀπολύει) τοὺς κανονικῶς ὑπηρετοῦντας στρατευσίμους καὶ συμπληρώσαντας περίοδον θητείας πέραν τῶν εἰκοσιτεσσάρων μηνῶν, τοὺς ἱκανοποιοῦντας τὸν Ὑπουργὸν ὅτι:

(ι). ἔχουν ἐγγραφῆ εἰς Πανεπιστήμιον ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ κ.λ.π.

Εἶναι φανερὸν ὅτι λαμβάνουν χώραν εἰς χρόνον μελλοντικόν, τὸν ὁποῖον θὰ καθορίση ὁ Ὑπουργὸς Ἐσωτερικῶν (βλ. παράγρ. 2
5 ἀποφάσεως). Ἰδιαιτέρως δέ, ὅσον ἀφορᾷ τοὺς κανονικῶς ὑπηρετοῦντας στρατευσίμους καὶ συμπληρώσαντας περίοδον θητείας πέραν τῶν 24 μηνῶν, ἡ ἀπόλυσίς των θὰ γίνῃ, νοουμένου ὅτι οὗτοι:

(α) θὰ ἱκανοποιήσουν τὸν Ὑπουργὸν Ἐσωτερικῶν ὅτι ἔχουν
10 γίνει ἀποδεκτοὶ εἰς Πανεπιστήμιον ἢ Ἀνωτάτην Σχολὴν τοῦ ἐξωτερικοῦ, καὶ

(β) θὰ πρέπει νὰ ἀκολουθήσουν τὰς εἰς τὸ Πανεπιστήμιον ἢ τὴν Ἀνωτάτην Σχολὴν τοῦ ἐξωτερικοῦ σπουδάς των "κατὰ τὸ προσεχὲς ἀκαδημαϊκὸν ἔτος 1974–75".

15 Εἶναι σημαντικὸν νὰ τονισθῇ ὅτι, μολονότι δὲν τίθενται χρονικὰ ὅρια σχετικῶς μὲ τὴν εἰσδοχὴν εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ, ἐκ τῆς φρασεολογίας τῆς ἀποφάσεως ἐξυπακούεται ὅτι τοιαύτη εἰσδοχὴ πρέπει νὰ ἔχῃ γίνει εἰς χρονικὴν περίοδον προηγουμένην τῆς αἰτήσεως δι' ἀπόλυσιν καὶ κατὰ
20 τοιοῦτον τρόπον ὥστε οἱ ὑποψήφιοι νὰ δυνηθοῦν νὰ ἀκολουθήσουν τὰ μαθήματα εἰς τὸ Πανεπιστήμιον ἢ τὴν Ἀνωτάτην Σχολὴν ἐντὸς τοῦ ἀκαδημαϊκοῦ ἔτους 1974–75. Κατὰ συνέπειαν, ἡ ἐπιχειρηματολογία ὅτι ἡ τοιαύτη εἰσδοχὴ ἔπρεπε νὰ εἶχε γίνῃ τοὐλάχιστον πρὸ τῆς 29ης Αὐγούστου 1974 εἶναι ἀπατηλή. Διότι,
25 κατὰ τὴν κρίσιν μου, οὐδαμοῦ τῆς φρασεολογίας τῆς ἀποφάσεως παρουσιάζεται τοιοῦτος περιορισμός, καὶ οὔτε δύναται ἐκ τῆς ἐν λόγῳ φρασεολογίας νὰ συναχθῇ τοῦτο συμπερασματικῶς.

Τοὐναντίον, ἐκ τῶν προνοιῶν τῆς παραγρ. 2 ὅτι "ὁ Ὑπουργὸς Ἐσωτερικῶν καθορίζει τὸν χρόνον ἀπολύσεως ἐπὶ τῇ βάσει τοῦ
30 χρόνου ἐνάρξεως τοῦ ἀκαδημαϊκοῦ ἔτους", δύναταί τις νὰ ἀχθῇ εἰς τὸ συμπέρασμα ὅτι εἶναι τὸ ἀκαδημαϊκὸν ἔτος τὸ ὁποῖον ἐνέχει τὴν ὑψίστην σημασίαν καὶ ὅτι τοῦτο θὰ προσδιορίσῃ καὶ τὸν χρόνον τῆς εἰσδοχῆς εἰς τὸ Πανεπιστήμιον ἢ τὴν Ἀνωτάτην Σχολήν.

35 Διὰ πάντας τοὺς ἀνωτέρω ἀναφερθέντας λόγους, προσθέτως δὲ ἔχων ὑπ' ὄψιν τοὺς κανόνας ἑρμηνείας καὶ πιστεύων ὅτι, ἀπὸ γραμματικῆς ἀπόψεως, ὁ χρόνος τοῦ ρήματος " ἀπολύει", μολονότι ἐνεστώς, δὲν σημαίνει κατ' ἀνάγκην μόνον " ἀπολύει τώρα", ἀλλ' ὅτι δύναται οὗτος νὰ σημαίνῃ καὶ ἐπαναληπτικὴν πρᾶξιν,
40 ἐπεκτείνων τὴν ἐνέργειάν του καὶ εἰς τὸ μέλλον, διὰ τῆς προσθήκης

τοιούτων ἐπιρρημάτων ὡς "πάντοτε", "ἑκάστοτε", "συνήθως", "ἐνίοτε", "ὁσάκις ..." κ.λ.π., δύναμαι νὰ καταλήξω εἰς τὸ συμπέρασμα, ὅτι οἱ αἰτηταὶ ἐμπίπτουν ἐντὸς τῶν προνοιῶν τῆς ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου καί, κατὰ συνέπειαν, ὤφειλον νὰ εἶχον ἀπολυθῆ. Ἡ ἄρνησις τοῦ Ὑπουργοῦ Ἐσωτερικῶν νὰ ἀπολύσῃ τοὺς ἐφεσείοντας ἦτο ἀντίθετος πρὸς τὰς διατάξεις τοῦ Συντάγματος ἢ καὶ τῶν νόμων καὶ ἐγένετο καθ' ὑπέρβασιν ἢ κατάχρησιν τῆς ἐξουσίας αὐτοῦ. Ὡς ἐκ τούτου, εἶμαι ὑποχρεωμένος νὰ κηρύξω τὴν ἀπόφασιν ταύτην ἄκυρον καὶ νὰ ἀποδεχθῶ τὴν ἔφεσιν.

Α. ΛΟΙΖΟΥ, Δ.:– Διὰ τῆς παρούσης ἐφέσεως ἐφεσιβάλλεται ἡ ἀπόφασις Δικαστοῦ τοῦ Δικαστηρίου τούτου, διὰ τῆς ὁποίας ἀπερρίφθη ἡ προσφυγὴ τῶν ἐφεσειόντων κατὰ τῆς ἀρνήσεως καὶ/ἢ παραλείψεως τῶν ἐφεσιβλήτων ὅπως ἀπολύσωσι τοὺς αἰτητὰς ἐκ τῶν Τάξεων τῆς Ἐθνικῆς Φρουρᾶς.

Τὰ σχετιζόμενα μὲ τὴν παροῦσαν ἔφεσιν γεγονότα εἶναι τὰ ἀκόλουθα:

Ὁ πρῶτος ἐφεσείων ἐγεννήθη τὴν 29.3.54 καὶ κατετάγη εἰς τὴν Ἐθνικὴν Φρουρὰν τὴν 20.7.72 ὅπου ὑπηρετεῖ μέχρι σήμερον ὡς ἀνθυπολοχαγός. Τὴν 12.9.74 οὗτος ἐνεγράφη εἰς τὴν Φιλοσοφικὴν Σχολὴν τοῦ Πανεπιστημίου Ἀθηνῶν.

Ὁ δεύτερος ἐφεσείων ἐγεννήθη τὴν 3.2.54 καὶ κατετάγη εἰς τὴν Ἐθνικὴν Φρουρὰν τὴν 20.7.72 ὅπου ὑπηρετεῖ μέχρι σήμερον ὡς ἀνθυπολοχαγός. Τὴν 23.9.74 ἐνεγράφη εἰς τὴν Νομικὴν Σχολήν, Οἰκονομικὸν Τμῆμα τοῦ Πανεπιστημίου Ἀθηνῶν.

Ὁ τρίτος ἐφεσείων ἐγεννήθη τὴν 19.8.54 καὶ κατετάγη εἰς τὴν Ἐθνικὴν Φρουρὰν τὴν 20.7.72 ὅπου ὑπηρετεῖ μέχρι σήμερον. Τὴν 25.9.74 ἐνεγράφη εἰς τὴν Ἀνωτάτην Ἐμπορικὴν τοῦ Πανεπιστημίου Ἀθηνῶν.

Ὁ τέταρτος ἐφεσείων ἐγεννήθη τὴν 4.6.53 καὶ κατετάγη εἰς τὴν Ἐθνικὴν Φρουρὰν τὴν 21.7.72 ὅπου ὑπηρετεῖ μέχρι σήμερον ὡς λοχίας. Τὴν 10.10.74 ἐνεγράφη εἰς τὴν Ἀνωτάτην Ἐμπορικὴν Πανεπιστημίου Ἀθηνῶν.

Συμφώνως τῶν διατάξεων τοῦ Ἄρθρου 5 (1) τῶν Περὶ Ἐθνικῆς Φρουρᾶς Νόμων 1964–1968 ἡ διάρκεια τῆς στρατιωτικῆς θητείας ὁρίζεται εἰς 24 μῆνας, ἀλλὰ δυνάμει τῆς παραγράφου (α) τοῦ αὐτοῦ Ἄρθρου — "μετὰ πάροδον θητείας ἑνὸς ἔτους ἢ ὁσάκις ἡ στρατιωτικὴ ἐπάρκεια καὶ ἀνάγκαι τῆς χώρας ἐπιτρέπωσι ἢ λόγοι δημοσίου συμφέροντος ἐπιβάλλωσι τοῦτο, τὸ Ὑπουργικὸν Συμ-

βούλιον δύναται δι' ἀποφάσεως αὐτοῦ δημοσιευομένης εἰς τὴν 'Επίσημον 'Εφημερίδα τῆς Δημοκρατίας νὰ συντάμῃ τὴν περίοδον θητείας εἰς οἱανδήποτε περίοδον οὐχὶ μικροτέραν τῶν ἕξη μηνῶν εἴτε κατὰ κλάσιν ἢ τμῆμα αὐτῆς εἴτε κατὰ περιφερείας ἢ κατηγο-
5 ρίας ἢ εἰς ἐξαιρετικὰς περιπτώσεις, κατ' ἄτομα τῇ αἰτήσει τούτων καὶ λόγῳ εἰδικῶν περιστάσεων".

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—
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Τὸ 'Υπουργικὸν Συμβούλιον διὰ τῆς ἀποφάσεως ὑπ' 'Αρ. 13391 τῆς 1.7.1974, δυνάμει τῆς ὡς ἄνω ἐπιφυλάξεως ἀπεφάσισεν ὅπως συντάμῃ καὶ οὕτω συνέταμε εἰς δέκα τέσσαρας μῆνας τὴν
10 περίοδον θητείας πάντων τῶν τότε ὑπηρετούντων στρατευσίμων οἱασδήποτε κλάσεως καὶ πάντων τῶν κληθέντων καὶ κληθησομένων στρατευσίμων. 'Η ἀπόφασις αὕτη ἐδημοσιεύθη εἰς τὸ τέταρτον Παράρτημα τῆς 'Επισήμου 'Εφημερίδος τῆς Δημοκρατίας τῆς 12.7. 1974 ὑπ' 'Αρ. 64.

15 Οἱ τέσσερεις ἐφεσείοντες δὲν θὰ ἐτύγχανον ὡς ἐκ τῶν πραγμάτων, τοῦ εὐεργετήματος τῆς ὡς ἄνω ἀποφάσεως, καθ' ὅτι εἶχον ἤδη ὑπηρετήσει εἰς τὰς τάξεις τῆς 'Εθνικῆς Φρουρᾶς διὰ περίοδον 24 μηνῶν ἀπὸ τῆς κατατάξεως των, καὶ θὰ ἀπελύοντο ἐκ τῆς Δυνάμεως οἱ μὲν πρῶτοι τρεῖς τὴν 19ην, ὁ δὲ τέταρτος τὴν 20ὴν 'Ιουλίου,
20 1974.

'Ως συνηθίζεται, φύλλον πορείας θὰ ἐδίδετο εἰς ἓν ἕκαστον ἐξ αὐτῶν καὶ δυνάμει τῶν διατάξεων τοῦ Ἄρθρου 15 (1) (α) ὡς τοῦτο ἐτροποποιήθη διὰ τοῦ Νόμου 44/65 Ἄρθρον 5, οὗτοι θὰ ἀπετέλουν τὴν ἐφεδρείαν τῆς Δυνάμεως ὡς ἐκπληρώνοντες τὴν ὑποχρέωσιν
25 θητείας αὐτῶν δυνάμει τοῦ Νόμου.

Πρὶν ἢ οἱ ἐφεσείοντες ἀπολυθοῦν συμφώνως τῶν ὡς ἄνω, συνέβησαν ἐν Κύπρῳ δραματικὰ γεγονότα, ἔχοντα ὡς ἀποκορύφωμα τὴν Τουρκικὴν εἰσβολὴν εἰς τὴν Δημοκρατίαν, τὴν 20.7.1974. Φυσικὸν ἐπακόλουθον καὶ ἐπιβεβλημένη ἐκ τῶν πραγμάτων
30 ἐνέργεια ἦτο ἡ προκύρηξις γενικῆς ἐπιστρατεύσεως ἐφέδρων ἀξιωματικῶν ὁπλιτῶν καὶ ἀγυμνάστων εἰδικῶν προσόντων. 'Ως ἐκ τούτου ἡ ὑπηρεσία τῶν ἐφεσειόντων ἐθεωρήθη ὡς ὑποχρέωσις ὑπηρεσίας ἐφέδρων, δυνάμει τῆς ἀποφάσεως περὶ γενικῆς ἐπιστρατεύσεως καὶ ἡ αὐτὴ θέσις δὲν ἀμφισβητεῖται εἰς τὴν παροῦσαν
35 ἔφεσιν, ὑπὸ ἑκατέρου τῶν μερῶν.

Τὴν 29.8.1974 τὸ 'Υπουργικὸν Συμβούλιον διὰ τῆς ἀποφάσεώς του ὑπ' 'Αρ. 13453, δημοσιευθείσης εἰς τὸ τέταρτον Παράρτημα τῆς 'Επισήμου 'Εφημερίδος τῆς Δημοκρατίας τῆς 30.8.1974 ὑπ' ἀρ. Γνωστοποιήσεως 73 καὶ ἀσκοῦν τὰς εἰς αὐτὸ χορηγουμένας
40 ἐξουσίας ὑπὸ τοῦ Ἄρθρου 9 (1) τῶν Περὶ τῆς 'Εθνικῆς Φρουρᾶς

Νόμων τοῦ 1964, ἀπεφάσισεν τὴν ἀπόλυσιν στρατευσίμων. Ἡ ἐν λόγῳ ἀπόφασις (τεκμ. 1) ἔχει ὡς ἀκολούθως:-

" 1. Τὸ Ὑπουργικὸν Συμβούλιον, ἀσκοῦν τὰς εἰς αὐτὸ χορηγουμένας ἐξουσίας ὑπὸ τοῦ ἄρθρου 9 (1) τῶν περὶ τῆς Ἐθνικῆς Φρουρᾶς Νόμων τοῦ 1964 ἕως 1968, διὰ τῆς παρούσης ἀποφάσεως ἀπολύει – 5

α) ἅπαντας τοὺς ἐφέδρους τῶν κλάσεων 1958 ἕως 1964 ἀμφοτέρων συμπεριλαμβανομένων·

β) ἅπαντας τοὺς ἐφέδρους τοὺς φοιτῶντας εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ· 10

γ) ἅπαντας τοὺς ἐφέδρους τοὺς ἀποδεδειγμένως διαμένοντας μονίμως εἰς τὸ ἐξωτερικόν·

δ) τοὺς κανονικῶς ὑπηρετοῦντας στρατευσίμους καὶ συμπληρώσαντας περίοδον θητείας πέραν τῶν εἰκοσιτεσσάρων μηνῶν, τοὺς ἱκανοποιοῦντας τὸν Ὑπουργὸν ὅτι: 15

(ι) ἔχουν ἐγγραφῆ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ·

(ιι) ἔχουν τύχει, κατόπιν ἐπιλογῆς ὑπὸ Ἐπιτροπῆς τυγχανούσης τῆς ἐγκρίσεως τοῦ Ὑπουργικοῦ Συμβουλίου καὶ διὰ περίοδον οὐχὶ μικροτέραν ἑνὸς ἀκαδημαϊκοῦ ἔτους ὑποτροφίας διὰ πανεπιστημιακὰς ἢ μεταπτυχιακὰς σπουδὰς εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς ἢ Ἱδρύματα ἰσότιμα πρὸς Πανεπιστήμια, εἰς τὸ ἐξωτερικὸν ἵνα οὗτοι δυνηθῶσι νὰ φοιτήσωσιν εἰς αὐτὰ κατὰ τὸ προσεχὲς ἀκαδημαϊκὸν ἔτος 1974–1975. 20 25

2. Ὁ χρόνος ἀπολύσεως τῶν ὑπὸ στοιχεῖα (β) καὶ (δ) (ι) καὶ (ιι) ἀνωτέρω θὰ καθορισθῇ ὑπὸ τοῦ Ὑπουργοῦ ἀναλόγως τοῦ χρόνου ἐνάρξεως τοῦ ἀκαδημαϊκοῦ ἔτους εἰς ἑκάστην περίπτωσιν". 30

Κατὰ τὴν πρωτόδικον διαδικασίαν ἠγέρθη ἐκ μέρους τῶν ἐφεσειόντων σωρεία νομικῶν λόγων, ὡς ὑποστηριζόντων τὴν προσφυγήν των. Μεταξὺ ἄλλων ὑπεστηρίχθη ὅτι ἡ ἀναγκαστικὴ παραμονὴ των ἐν ὑπηρεσίᾳ συνιστᾷ ἀπάνθρωπον καὶ ἀντισυνταγματικὴν μεταχείρισιν καθ' ὅτι παραβιάζει βασικὰ ἄρθρα τοῦ Συντάγματος, ὡς τὸ Ἄρθρον 8, ὅτι οὐδεὶς ὑποβάλλεται εἰς βασανιστικὴν ἢ εἰς ἀπάνθρωπον ἢ ταπεινωτικὴν τιμωρίαν ἢ μεταχεί- 35

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-
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ρισιν, τὸ Ἄρθρον 10 (2), ὅτι οὐδεὶς ἐξαναγκάζεται εἰς ἐκτέλεσιν ἀναγκαστικῆς ἐργασίας, τὸ ἄρθρον 11, ὅτι ἕκαστος ἔχει τὸ δικαίωμα ἐλευθερίας καὶ προσωπικῆς ἀσφαλείας, τὸ Ἄρθρον 13, ἐν σχέσει πρὸς τὸ δικαίωμα τῆς ἐλευθέρας μετακινήσεως ἐντὸς τοῦ ἐδάφους
5 τῆς Δημοκρατίας, τὸ Ἄρθρον 15, ὅτι ἡ ἰδιωτικὴ καὶ οἰκογενειακὴ αὐτοῦ ζωὴ τυγχάνει σεβασμοῦ, τὸ Ἄρθρον 19, ὡς πρὸς τὴν ἐλευθερίαν τοῦ λόγου καὶ τῆς καθ' οἱονδήποτε τρόπον ἐκφράσεως, τὸ Ἄρθρον 20, ἐν σχέσει πρὸς τὸ δικαίωμα μορφώσεως, τὸ Ἄρθρον 21, ὡς πρὸς τὸ δικαίωμα τοῦ συνέρχεσθαι εἰρηνικῶς, τὸ Ἄρθρον
10 25, ὡς πρὸς τὸ δικαίωμα νὰ ἀσκῇ οἱονδήποτε ἐπάγγελμα ἢ νὰ ἐπιδίδεται εἰς οἱανδήποτε ἀπασχόλησιν, ἐμπόριον ἢ ἐπικερδῆ ἐργασίαν, τὸ Ἄρθρον 27, τὸ δικαίωμα τοῦ ἀπεργεῖν καὶ ὡς ἀποτέλεσμα τὸ Ἄρθρον 28, ὅτι ἅπαντες εἶναι ἴσοι ἐνώπιον τοῦ Νόμου, τῆς διοικήσεως καὶ τῆς δικαιοσύνης.

15 Ὀρθῶς ὅμως κατὰ τὴν ὑπὸ κρίσιν ἔφεσιν, τὰ ἐγειρόμενα θέματα ἐπεριορίσθησαν εἰς δύο:

1ον Ὅτι ἡ ὀρθὴ ἑρμηνεία τῆς προαναφερθείσης ἀποφάσεως εἶναι ὅτι ἐδικαιοῦντο ἀπολύσεως ἅπαντες οἱ στρατεύσιμοι οἵτινες θὰ ἱκανοποίουν τὸν Ὑπουργὸν ὅτι καθ' οἱονδήποτε χρόνον μέχρι
20 τῆς ὑπ' αὐτοῦ λήψεως ἀποφάσεως περὶ τῆς ἀπολύσεώς των ἐνεγράφησαν εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ· οὐχὶ δὲ μόνον τοὺς πρὸ τῆς ἡμερομηνίας ἐκδόσεως τῆς ὡς ἄνω ἀποφάσεως οὕτω ἐγγραφέντας, καὶ

2ον Εἰς περίπτωσιν καθ' ἣν ἤθελε θεωρηθῇ ὅτι διὰ τῆς ὡς ἄνω
25 ἀποφάσεως ἐδικαιοῦντο εἰς ἀπόλυσιν μόνον ὅσοι κατὰ τὸν χρόνον τῆς ἐκδόσεώς της εἶχον ἤδη ἐξασφαλίσει τοιαύτην ἐγγραφήν, τότε ἡ ὑπὸ ἐξέτασιν ἀπόφασις εἶναι ἀντισυνταγματικὴ ὡς ἀντιβαίνουσα τὸ Ἄρθρον 28 τοῦ Συντάγματος ὑπὸ τὴν ἔννοιαν ὅτι δι' αὐτῆς γίνεται δυσμενὴς διάκρισις μεταξὺ ἐθνοφρουρῶν ἐγγρα-
30 φέντων εἰς Πανεπιστήμια καὶ Ἀνωτάτας Σχολὰς πρὸ τῆς 29.8.74 καὶ ἐθνοφρουρῶν οἵτινες θὰ ἐνεγράφοντο μετὰ τὴν ἐν λόγῳ ἡμερομηνίαν.

Ὡς πρὸς τὸ 1ον θέμα ἡ προβληθεῖσα ἐπιχειρηματολογία ἐκ μέρους τῶν ἐφεσειόντων ἦτο ὅτι ἡ λέξις "ἀπολύει" τοὺς κανονικῶς
35 ὑπηρετοῦντας καὶ ... τοὺς ἱκανοποιοῦντας τὸν Ὑπουργὸν ὅτι ἔχουν ἐγγραφῇ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ, σημαίνει ἀπολύει ἑκάστοτε ἐπὶ τῇ συμπτώσει ἢ ἐπελεύσει τῶν προϋποθέσεων αἱ ὁποῖαι τίθενται εἰς τὴν παρ. 1 (δ) (ι) τῆς ἀποφάσεως.

40 Κατὰ τὴν κρίσιν μου ἐκ τῆς γραμματικῆς ἑρμηνείας τοῦ τεκμ. 1 καὶ διὰ τῆς ἀποδόσεως εἰς τοῦτο τῆς φυσικῆς σημασίας τῶν λέξεων,

καλύπτονται, διὰ τῆς ὡς ἄνω ἀποφάσεως, ἅπαντες οἵτινες εἶχον ἐξασφαλίσει ἐγγραφὴν πρὸ τῆς ἡμερομηνίας τῆς ἀποφάσεως, ἤτοι ἅπαντες οἱ ἱκανοποιοῦντες τὰς προϋποθέσεις τὰς ἀπαιτουμένας διὰ τὴν ἀπόλυσιν μέχρι τῆς ἡμερομηνίας τῆς ἀποφάσεως αὐτῆς.

Διὰ τῆς ἀποφάσεως τὸ Ὑπουργικὸν Συμβούλιον ἐνασκεῖ τὰς ὑπὸ τοῦ Ἄρθρου 9 (1) χορηγουμένας εἰς αὐτὸ ἐξουσίας. Ἀπολύει ὅσους ἐκ τῶν ὑπηρετούντων ἐθνοφρουρῶν ἔχουν συμπληρώσει περίοδον θητείας πέραν τῶν 24 μηνῶν καὶ θὰ δύνανται νὰ ἱκανοποιήσουν τὸν Ὑπουργὸν ὅτι εἶχον τύχει τοιαύτης ἐγγραφῆς πρὸ τῆς λήψεως τῆς ἀποφάσεως τῆς 29.8.1974. Ἀφίεται δὲ διὰ τῆς παρα 2 τῆς ἀποφάσεως ὁ καθορισμὸς ὑπὸ τοῦ Ὑπουργοῦ ἀναλόγως τοῦ χρόνου ἐνάρξεως τοῦ ἀκαδημαϊκοῦ ἔτους εἰς ἑκάστην περίπτωσιν τοῦ χρόνου ἀπολύσεως.

Διὰ τῆς ὡς ἄνω ἀποφάσεως τὸ περιεχόμενον αὐτῆς, ἤτοι ἡ ἀπόλυσις ἐξαντλεῖται ἐν τῇ διαπιστώσει ὡρισμένων καταστάσεων.

Ὡς ἀναφέρεται εἰς τὸ σύγγραμμα Δίκαιον τῶν Διοικητικῶν Πράξεων, Μ. Δ. Στασινοπούλου (1951) σελ. 136 –

> " Βάσις τῆς διακρίσεως εἰς διαπιστώσεις καὶ κυρίως πράξεις εἶναι ἡ παρατήρησις, ὅτι ὡρισμένων διοικητικῶν πράξεων τὸ περιεχόμενον ἐξαντλεῖται ἐν τῇ διαπιστώσει ὡρισμένης καταστάσεως, ἥτις διὰ μόνης τῆς αὐθεντικῆς ἐξακριβώσεως τῆς ὑπάρξεως αὐτῆς ἐπάγεται τὰς νομίμους συνεπείας, χωρὶς ἡ διαπιστοῦσα αὐτὴν διοικητικὴ πρᾶξις νὰ δημιουργῇ νέαν τινὰ σχέσιν ἢ κατάστασιν, ἀπορρέουσαν ἀμέσως ἐκ τῆς βουλήσεως τῆς Διοικήσεως. Τοὐναντίον, διὰ τῶν λοιπῶν πράξεων ἡ βούλησις τοῦ ὀργάνου δημιουργεῖ ἀμέσως νομικὰς σχέσεις ἢ καταστάσεις, δικαιώματα καὶ ὑποχρεώσεις ἢ προβαίνει εἰς ἀλλοίωσιν ἢ κατάργησιν αὐτῶν".

Ἡ ὡς ἄνω διοικητικὴ πρᾶξις (α) ἀναγνωρίζει δικαίωμα ἀπολύσεως ὅπερ δίδεται ὑπὸ τοῦ ἁρμοδίου κατὰ νόμον διοικητικοῦ ὀργάνου ἤτοι τοῦ Ὑπουργικοῦ Συμβουλίου, (β) ἐκχωρεῖ μέρος τῶν ἁρμοδιοτήτων τούτου εἰς τὸν Ὑπουργὸν Ἐσωτερικῶν πρὸς διαπίστωσιν καταστάσεως ἤτοι τῶν προϋποθέσεων τοῦ δικαιώματος ἀπολύσεως καὶ (γ) καθίσταται πρᾶξις δημιουργικὴ καθ' ὃ μέρος χορηγεῖ διὰ τῆς πράξεως ταύτης τὰ ἐκ τῆς διαπιστώσεως συνεπόμενα δικαιώματα ἢ τὰς ἀντιστοίχους πρὸς τὰς ἀρχὰς δι' ἀπόλυσιν ὑποχρεώσεις.

Ἐν ὄψει τοῦ ὡς ἄνω συμπεράσματος ἔδει ὅπως ἐξετασθῇ τὸ δεύτερον ἐγειρόμενον θέμα ἤτοι τὸ θέμα τῆς δυσμενοῦς διακρίσεως καὶ τῆς ἀνισότητος μεταχειρίσεως.

Ἐλέχθη, καὶ δὲν ὑπάρχει περὶ τούτου ἀμφισβήτησις, ὅτι αἱ ἐγγραφαὶ εἰς τὰ ἑλληνικὰ Πανεπιστήμια καὶ Ἀνωτάτας Σχολὰς ἄρχονται τὴν 1ην Σεπτεμβρίου, ἑκάστου ἔτους. Ὅθεν ἰσχυρίζονται ὅτι ὁ καθορισμὸς τῆς 29ης Αὐγούστου ὡς τῆς τελευταίας ἡμέρας
5 τῆς ἐγγραφῆς ἀναγνωριζομένης ὡς προϋποθέσεως ἀπολύσεως, εἶναι αὐθαίρετος, καθ' ὅτι ἐξαιρεῖ τοῦ δικαιώματος ἀπολύσεως ἅπαντας τοὺς προτιθεμένους νὰ φοιτήσουν εἰς ἑλληνικὰ Πανεπιστήμια διὰ τὸ ἀκαδημαϊκὸν ἔτος 1974–1975. Ὑφίσταται ἑπομένως, σὺν τοῖς ἄλλοις καὶ διάκρισις κατὰ χώρας.

10 Ὁ πρωτοδίκως ἐκδικάσας τὴν ὑπόθεσιν δικαστὴς στηριχθεὶς εἰς τὴν Νομολογίαν τοῦ δικαστηρίου τούτου κατέληξεν εἰς τὸ συμπέρασμα ὅτι ἡ οὕτω ἑρμηνευθεῖσα ἀπόφασις δὲν ἀπετέλει θέμα ἀνισότητος ἢ δυσμενοῦς διακρίσεως καὶ συμφωνῶ μὲ τὸ συμπέρασμα τοῦτο. Ὡς ἐγένετο δεκτὸν ὑπὸ τῆς Νομολογίας διὰ σειρᾶς ἀπο-
15 φάσεων ἀρχομένων ἀπὸ τῆς ὑποθέσεως Μικρομμάτη *v*. Δημοκρατίας, 2 R.S.C.C., 125 μέχρι τῆς προσφάτως ἐκδοθείσης ἀποφάσεως τῆς ὁλομελείας εἰς τὴν ὑπόθεσιν Δημητράκη Μελετίου καὶ ἄλλων *v*. Ἐπαρχιακοῦ Γραφείου Ἐργασίας (1975) 2 C.L.R. 21 ἡ ἔννοια "ἴσος ἐνώπιον τοῦ νόμου", δὲν ἔχει τὴν ἔννοιαν τῆς ἀκριβοῦς
20 μαθηματικῆς ἰσότητος, ἀλλὰ προστατεύει μόνον ἐναντίον τῶν αὐθαιρέτων διακρίσεων καὶ δὲν ἀποκλείει λογικὰς διαφοροποιήσεις αἱ ὁποῖαι ὀφείλουν νὰ γίνωνται ἐν ὄψει τῆς φύσεως τῶν γεγονότων. Περαιτέρω ἐγένετο δεκτὸν ὅτι ἡ ὑπὸ τοῦ Συντάγματος κατοχυρωμένη ἰσότης ἐπιβάλλει ἰσότητα δικαίου "ἤτοι ἀπαγο-
25 ρεύει οὐ μόνον τὴν ἄνισον ἐφαρμογὴν τῶν νόμων, ἀλλὰ καὶ τὴν ὑπὸ τοῦ νομοθέτου οὐσιαστικῶς ἄνισον ρύθμισιν τοῦ δικαίου. Δὲν ἀποκλείονται καὶ κατὰ τὴν ἄποψιν ταύτην παρεκκλήσεις ἐκ τοῦ γενικοῦ κανόνος, ἀλλ' αὗται, ἀφ' ἑνὸς μὲν δὲν εἶναι δυνατὸν νὰ ὑπερβαίνουν ὡρισμένα ἀκραῖα ὅρια εἰς ἑκάστην δεδομένην
30 περίπτωσιν, ἀφ' ἑτέρου δὲ ἐπιτρέπονται μόνον ἐφ' ὅσον συντρέχουν ἐπαρκεῖς λόγοι δικαιολογοῦντες αὐτὰς ἐξ ἀντικειμένου". (Ἴδε Σγουρίτσα Συνταγματικὸν Δίκαιον Τόμος 2ος Μέρος Β, (1966) σελ. 185, υἱοθετηθὲν εἰς τὴν ὑπόθεσιν Μελετίου ἄνωθι).

Εἰς τὴν προκειμένην περίπτωσιν δέον ὅπως σημειωθῇ ὅτι ὁ
35 ὅρος "ἀναγκαστικὴ ἢ ὑποχρεωτικὴ ἐργασία", ὁ ἀναφερόμενος εἰς τὸ Ἄρθρον 10 (2) τοῦ Συντάγματος, δὲν περιλαμβάνει συμφώνως τῆς παραγράφου 3 (β) τοῦ ἰδίου Ἄρθρου οἱανδήποτε τυχὸν ἐπιβληθησομένην στρατιωτικοῦ χαρακτῆρος ὑπηρεσίαν καὶ οὕτω ἐπιτρέπονται περιορισμοὶ ἢ ἐξαιρέσεις εἰς τὸ θεμελειῶδες δικαίωμα
40 προστασίας ἐκ τοῦ ἐξαναγκασμοῦ εἰς ἐκτέλεσιν ἀναγκαστικῆς ἢ ὑποχρεωτικῆς ἐργασίας τὸ κατοχυρούμενον ὑπὸ τοῦ Ἄρθρου 10 (2). Ἡ διάταξις ταύτη τοῦ Συντάγματος ἀντιστοιχεῖ πρὸς

τὸ Ἄρθρον 4 τῆς Εὐρωπαϊκῆς Συμβάσεως διὰ τὴν προάσπισιν τῶν Ἀνθρωπίνων Δικαιωμάτων, προσυπογραφείσης ὑπὸ τῆς Δημοκρατίας καὶ κυρωθείσης διὰ τοῦ ὁμωνύμου Νόμου άρ. 39 τοῦ 1962. Ὀρθῶς δὲ ἡ στρατιωτικὴ ὑπηρεσία δὲν περιλαμβάνεται εἰς τὴν ἔννοιαν τοῦ ὅρου "καταναγκαστικὴ ἐργασία", καθ' ὅτι ἡ τοιαύτη ὑπηρεσία ἀποτελεῖ εὐκαιρίαν τιμητικῆς προσφορᾶς πρὸς τὴν πατρίδα καὶ γενικῶς κριθεῖσα ὡς ἀπαραίτητος ἀνὰ τοὺς αἰῶνας. Εἶναι πρόδηλον ὅτι ἡ στρατιωτικὴ ὑπηρεσία καὶ δὴ ἐν καιρῷ πολέμου εἶναι ἀρρήκτως συνυφασμένη μετὰ τῆς ὑποστάσεως τῆς πολιτείας. Ὡς ἐκ τούτου ἡ διακριτικὴ εὐχέρεια τῆς διοικήσεως διὰ τοιαῦτα θέματα εἶναι εὐρυτάτη ὑποκειμένη βεβαίως εἰς δικαστικὸν ἔλεγχον τῆς νομιμότητος της ὡς σχέσις Δημοσίου Δικαίου. Ὁ καθορισμὸς χρονικοῦ σημείου διαφοροποιήσεως μεταξὺ στρατευσίμων οἵτινες θὰ τύχουν εὐεργετήματος τινὸς ἢ οὔ, εἶναι ὑπὸ τὰς περιστάσεις τοῦ ἀπροσώπου χαρακτῆρος αὐτοῦ καὶ τῆς εὐρύτητος τῆς τάξεως τὴν ὁποίαν περιλαμβάνει εὔλογος καὶ δὲν ἀποτελεῖ δυσμενῆ διάκρισιν, ἐξεταζομένης τῆς λογικότητος τῆς ταξινομήσεως αὐτῆς ἐν ἀναφορᾷ πρὸς τὰς στρατιωτικὰς ἀνάγκας καὶ τὰ προσωπικὰ στοιχεῖα ἅτινα ὑπάρχουν κατὰ τὸν χρόνον τῆς λήψεως τῆς σχετικῆς ἀποφάσεως.

Δύναται δὲ νὰ λεχθῇ ὅτι ἦτο εὔλογον νὰ ἀπολυθοῦν ἐκεῖνοι οἱ ὁποῖοι ἤδη, καθ' ὅσον ἀφορᾷ τὰ ἑλληνικὰ Πανεπιστήμια, δυνατὸν νὰ ἀπώλεσαν ἓν ἀκαδημαϊκὸν ἔτος καὶ νὰ μὴν τύχουν ἀπολύσεως οἱ ὑπόλοιποι. Ἐὰν ἐντὸς τῆς διατάξεως αὐτῆς λόγῳ τῆς δυνατότητος ἐγγραφῆς εἰς ἄλλας Σχολὰς ἢ Πανεπιστήμια πρὸ τῆς 29ης Αὐγούστου τοῦτοι ἐτύγχανον τοῦ ἐν λόγῳ εὐεργετήματος τοῦτο καὶ μόνον δὲν καθιστᾷ παράλογον καὶ αὐθαίρετον τὸν καθορισμὸν τῆς ὡς ἄνω ἡμερομηνίας. Ἀντιθέτως τίθενται εἰς τὴν ἰδίαν μοῖραν μὲ τοὺς ἤδη ἀπολέσαντας ἓν ἀκαδημαϊκὸν ἔτος. Ὑπὸ τὰς περιστάσεις ὁ καθορισμὸς τοῦ χρονικοῦ τούτου ὁρίου δὲν ὑπερβαίνει τὰ ἀκραῖα ὅρια καθ' ὅτι συντρέχουν ἐπαρκεῖς λόγοι, δικαιολογοῦντες αὐτὸν ἐξ ἀντικειμένου.

Διὰ τοὺς ὡς ἄνω λόγους ἡ παροῦσα ἔφεσις ἀπορρίπτεται ἄνευ ἐξόδων.

ΣΤΑΥΡΙΝΙΔΗΣ, Δ.:- Συμφωνῶ ὅτι ἡ ἐπίδικος ἀπόφασις ἐβασίσθη ἐπὶ παρερμηνείας τῆς λέξεως "ἀπολύει" ἡ ὁποία ἀπαντᾶ εἰς τὴν ἀρχὴν τῆς ὑπουργικῆς ἀποφάσεως. Ἡ λέξις αὐτὴ πρέπει νὰ ἑρμηνευθῇ ὡς ἀναφερομένη ὄχι μόνον εἰς τὸ παρὸν ἀλλὰ καὶ εἰς τὸ μέλλον. Τοιαύτη χρῆσις τοῦ ἐνεστῶτος δὲν εἶναι ἄγνωστος εἰς τὴν ἑλληνικὴν νομικὴν γλῶσσαν, πολλὰ δὲ σχετικὰ παραδείγματα θὰ ἠδύναντο νὰ ἀναφερθοῦν.

Συμφωνῶ ὅτι ἡ ἐπίδικος ἀπόφασις εἶναι ἀκυρωτέα διὰ τὸν ἄνω λόγον καὶ θεωρῶ περιττὸν νὰ ἀσχοληθῶ μὲ τὸ θέμα τῆς δυσμενοῦς διακρίσεως.

Λ. ΛΟΪΖΟΥ, Δ.:– Συμφωνῶ ὅτι ἡ ἔφεσις πρέπει νὰ γίνῃ ἀποδεκτή.
5 Τὰ γεγονότα ἔχουν ἤδη ἐκτεθῆ καὶ δὲν προτίθεμαι νὰ ἀσχοληθῶ μὲ αὐτὰ ἐν λεπτομερείᾳ. Διὰ τοὺς σκοποὺς τῆς παρούσης ἀποφάσεως θεωρῶ ἐπαρκὲς νὰ εἴπω ὅτι εἶναι πρόδηλον καὶ παραδεκτὸν ὅτι:–

(ι) Ἅπαντες οἱ ἐφεσείοντες εἶχον, κατὰ πάντα οὐσιώδη χρό-
10 νον, ὑπηρετήσει εἰς τὴν Ἐθνικὴν Φρουρὰν διὰ περιόδους ὑπερβαινούσας τοὺς 24 μῆνας.

(ιι) Ἡ εἰς τὰ Πανεπιστήμια τῆς Ἑλλάδος εἰσδοχὴ νέων φοιτητῶν δὲν ἀρχίζει πρὸ τῆς 1ης Σεπτεμβρίου ἑκάστου ἀκαδημαικοῦ ἔτους.

15 (ιιι) Οἱ πρῶτοι τρεῖς ἐφεσείοντες ἐνεγράφησαν εἰς τὸ Πανεπιστήμιον Ἀθηνῶν εἰς διαφόρους ἡμερομηνίας μεταξὺ τῆς 12ης καὶ τῆς 23ης Σεπτεμβρίου, 1974, καὶ ὁ τέταρτος τὴν 10ην Ὀκτωβρίου 1974.

(ιν) Τὸ ἀκαδημαϊκὸν ἔτος εἰς τὰ Πανεπιστήμια τῆς Ἑλλάδος
20 οὐδέποτε, κατὰ κανόνα, ἄρχεται πρὸ τῆς 1ης Ὀκτωβρίου ἑκάστου ἔτους, εἰδικῶς δὲ κατὰ τὸ ἀκαδημαϊκὸν ἔτος 1974–1975 τὸ Πανεπιστήμιον Ἀθηνῶν ἤνοιξε διὰ κανονικὰ μαθήματα κατὰ τὰς ἀρχὰς τοῦ Ἰανουαρίου 1975.

25 Τὸ πρῶτον καὶ ζωτικώτερον θέμα τὸ ὁποῖον χρήζει ἐξετάσεως εἰς τὴν παροῦσαν ἔφεσιν εἶναι τὸ κατὰ πόσον οἱ τέσσαρες ἐφεσείοντες καλύπτονται, ὑπὸ τὸ φῶς τῶν ἀνωτέρω, ὑπὸ τῆς ἀπὸ 29 Αὐγούστου, 1974, ὑπ' ἀριθμὸν 13453 ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου (τεκμήριον 1) καὶ διὰ τοῦτο θεωρῶ σκόπιμον νὰ
30 παραθέσω τὸ σχετικὸν ἐκ τῆς ἐν λόγῳ ἀποφάσεως μέρος:–

" ΑΠΟΣΠΑΣΜΑ ΕΚ ΤΩΝ ΠΡΑΚΤΙΚΩΝ ΤΗΣ ΣΥΝΕΔΡΙΑΣ ΤΟΥ ΥΠΟΥΡΓΙΚΟΥ ΣΥΜΒΟΥΛΙΟΥ ΗΜΕΡΟΜΗΝΙΑΣ 29.8.1974

Ἀπόλυσις Ἐφέδρων καὶ ἄλλων στρατευσίμων Ἀπόφασις ὑπ' ἀρ. 13.453 (Πρότασις ὑπ' Ἀρ. 470/74).

35 1. Τὸ Ὑπουργικὸν Συμβούλιον, ἀσκοῦν τὰς εἰς αὐτὸ χορηγουμένας ἐξουσίας ὑπὸ τοῦ ἄρθρου 9 (1) τῶν περὶ τῆς Ἐθνι-

κῆς Φρουρᾶς Νόμων τοῦ 1964 ἕως 1968, διὰ τῆς παρούσης ἀποφάσεως ἀπολύει –

(α) ἅπαντας τοὺς ἐφέδρους τῶν κλάσεων 1958 ἕως 1964 ἀμφοτέρων συμπεριλαμβανομένων·

(β) ἅπαντας τοὺς ἐφέδρους τοὺς φοιτῶντας εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ· 5

(γ) ἅπαντας τοὺς ἐφέδρους τοὺς ἀποδεδειγμένως διαμένοντας μονίμως εἰς τὸ ἐξωτερικόν·

(δ) τοὺς κανονικῶς ὑπηρετοῦντας στρατευσίμους καὶ συμπληρώσαντας περίοδον θητείας πέραν τῶν εἰκοσιτεσσάρων μηνῶν, τοὺς ἱκανοποιοῦντας τὸν Ὑπουργὸν ὅτι: 10

(ι) ἔχουν ἐγγραφῆ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ·

(ιι) ἔχουν τύχει, κατόπιν ἐπιλογῆς ὑπὸ Ἐπιτροπῆς τυγχανούσης τῆς ἐγκρίσεως τοῦ Ὑπουργικοῦ Συμβουλίου καὶ διὰ περίοδον οὐχὶ μικροτέραν ἑνὸς ἀκαδημαϊκοῦ ἔτους ὑποτροφίας διὰ πανεπιστημιακὰς ἢ μεταπτυχιακὰς σπουδὰς εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς ἢ Ἱδρύματα ἰσότιμα πρὸς Πανεπιστήμια εἰς τὸ ἐξωτερικὸν ἵνα οὗτοι δυνηθῶσι νὰ φοιτήσωσιν εἰς αὐτὰ κατὰ τὸ προσεχὲς ἀκαδημαϊκὸν ἔτος 1974–1975. 15 20

2. Ὁ χρόνος *ἀπολύσεως τῶν ὑπὸ στοιχεῖα* (β) καὶ (δ) (ι) καὶ (ιι) ἀνωτέρω θὰ καθορισθῇ ὑπὸ τοῦ Ὑπουργοῦ ἀναλόγως τοῦ χρόνου ἐνάρξεως τοῦ ἀκαδημαϊκοῦ ἔτους εἰς ἑκάστην περίπτωσιν". 25

Δέον νὰ παρατηρηθῇ ὅτι ἐν τῷ κειμένῳ τῆς ἀποφάσεως οὐδεὶς χρονικὸς περιορισμὸς τίθεται ἐν ἀναφορᾷ πρὸς τὸν χρόνον εἰσδοχῆς ἑνὸς φοιτητοῦ εἰς Πανεπιστήμιον διὰ νὰ τοῦ δίδῃ τὸ δικαίωμα ἐντάξεως ἐν τῷ πλαισίῳ τῶν προνοιῶν τῆς Ἀποφάσεως· καὶ εἶναι δι' ἐμὲ σαφὲς ὅτι ἡ *29η* Αὐγούστου *1974*, ἥτις εἶναι ἡ ἡμερομηνία καθ' ἣν ἐλήφθη ἡ ἀπόφασις, δὲν δύναται νὰ θεωρηθῇ ὡς εἰσάγουσα τὸν τοιοῦτον χρονικὸν περιορισμόν. Φρονῶ ὅτι ἐὰν ἐπεδιώκετο τοιοῦτος περιορισμὸς οὗτος ἔπρεπε νὰ εἶχε εἰσαχθῇ ὄχι μὲ τὸ " διὰ τῆς *παρούσης ἀπολύει*" ἀλλὰ διὰ τοῦ " διὰ ταύτης ἀποφασίζει ὅπως ἀπολύσῃ τοὺς κατὰ τὴν 29ην Αὐγούστου 1974 πληροῦντας τοὺς ἀκολούθους ὅρους". Φρονῶ περαιτέρω ὅτι τὸ ρῆμα ἀπολύω ὡς τοῦτο χρησιμοποιεῖται εἰς τὴν ὁριστικὴν τοῦ ἐνεστῶ- 30 35

τος, ὡς συμβαίνει καὶ εἰς τοὺς νόμους καὶ τοὺς κανονισμοὺς ὑποδηλοῖ συνέχειαν καὶ σημαίνει διάταξιν ἐν διαρκεῖ ἰσχύϊ ἐκτὸς ἐὰν προσδιορίζεται ἄλλως.

Διὰ τὸν ὡς ἄνω λόγον εἶμαι τῆς γνώμης ὅτι οἱ τέσσαρες ἐφεσείοντες πληροῦν τοὺς ὅρους καὶ καλύπτονται ὑπὸ τῶν προνοιῶν τῆς προαναφερθείσης 'Αποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου καὶ ὅτι, διὰ τοῦτο, ἡ παροῦσα ἔφεσις δέον νὰ γίνῃ ἀποδεκτή.

Τέλος νομίζω ὅτι ὀφείλω νὰ δηλώσω ὅτι, ὑπὸ τὸ φῶς τῶν περιστατικῶν τῆς παρούσης ὑποθέσεως, ἡ ἀντίθετος ἄποψις, κατὰ τὴν γνώμην μου, θὰ ἤγειρε σοβαρὰς ἀμφιβολίας ὡς πρὸς τὴν ἰσχὺν τῆς κρινομένης 'Αποφάσεως λόγῳ τῆς ἀρχῆς τῆς δυσμενοῦς διακρίσεως.

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, ΠΡ.:– Τὰ γεγονότα τῆς παρούσης ὑποθέσεως, ὡς καὶ αἱ σχετικαὶ νομοθετικαὶ πρόνοιαι, ἔχουν ἐκτεθῆ διὰ μακρῶν εἰς τὰς ἤδη ἀναγνωσθείσας ἀποφάσεις καὶ διὰ τοῦτο δὲν χρειάζεται ἡ ἐπανάληψίς των.

Συμφωνῶ μὲ τὴν ὑπὸ τοῦ Δικαστοῦ κ. Α. Λοΐζου ἐκφρασθεῖσαν ἄποψιν ὅτι ἡ ὑποπαράγραφος δ (ι) τῆς παραγράφου 1 τῆς ἀποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου, ὑπ' ἀριθμὸν 13453, ὑπὸ ἡμερομηνίαν 29 Αὐγούστου 1974, διὰ τῆς ὁποίας τὸ 'Υπουργικὸν Συμβούλιον ".. ἀπολύει (δ) τοὺς κανονικῶς ὑπηρετοῦντας στρατευσίμους καὶ συμπληρώσαντας περίοδον θητείας πέραν τῶν εἰκοσιτεσσάρων μηνῶν, τοὺς ἱκανοποιοῦντας τὸν 'Υπουργὸν" – (τὸν 'Υπουργὸν 'Εσωτερικῶν) – " ὅτι: (ι) ἔχουν ἐγγραφῆ εἰς Πανεπιστήμια ἢ 'Ανωτάτας Σχολὰς τοῦ ἐξωτερικοῦ" ἀναφέρεται εἰς ὅσους εἶχον ἤδη ἐγγραφῆ οὕτω κατὰ τὴν ἡμέραν τῆς λήψεως τῆς τοιαύτης ἀποφάσεως καὶ ὡς ἐκ τούτου δὲν δύναμαι νὰ συμφωνήσω μὲ τὴν εἰσήγησιν τοῦ συνηγόρου τῶν ἐφεσειόντων ὅτι ἡ ἐν λόγῳ ὑποπαράγραφος ἀφεώρα καὶ εἰς τοὺς ἐφεσείοντας, οἵτινες ἐνεγράφησαν μετὰ τὴν ὡς ἄνω ἡμερομηνίαν.

'Ορθῶς ὅθεν οἱ ἐφεσίβλητοι ἠρνήθησαν νὰ ἀπολύσουν τοὺς ἐφεσείοντας δυνάμει τῆς εἰρημένης ὑποπαραγράφου.

'Η παράγραφος 2 τῆς περὶ ἧς ὁ λόγος ἀποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου προνοεῖ ὅτι ὁ χρόνος ἀπολύσεως "τῶν ὑπὸ στοιχεῖα ...... (δ) (ι) ...... ἀνωτέρω θὰ καθορισθῆ ὑπὸ τοῦ 'Υπουργοῦ ἀναλόγως τοῦ χρόνου ἐνάρξεως τοῦ ἀκαδημαϊκοῦ ἔτους εἰς ἑκάστην περίπτωσιν"· πρόκειται, δέ, βεβαίως, περὶ τοῦ ἀκαδημαϊκοῦ ἔτους 1974–1975, πρὸς τὸ ὁποῖον καὶ μόνον σχετίζονται αἱ ἀπολύσεις διὰ σπουδὰς αἱ διαταχθεῖσαι διὰ τῆς ἀποφάσεως τοῦ 'Υπουργικοῦ Συμβουλίου.

Μέχρι τῆς ἐνάρξεως τοῦ ἀκαδημαϊκοῦ ἔτους 1974–1975 ἦτο δυνατὸν διὰ στρατευσίμους, οἵτινες δὲν εἶχον ἐγγραφῇ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ ἕως τὴν 29ην Αὐγούστου 1974, νὰ ἐξασφαλίσουν τοιαύτην ἐγγραφήν, ὡς ἔπραξαν καὶ οἱ ἐφεσείοντες· ἐν τούτοις οὗτοι δὲν θὰ ἠδύναντο νὰ ἀπολυθοῦν ἐκ τῶν τάξεων τῆς Ἐθνικῆς Φρουρᾶς, διὰ νὰ μεταβοῦν εἰς τὸ ἐξωτερικὸν διὰ σπουδάς, ὡς συνέβη μὲ ὅσους εἶχον ἤδη ἐγγραφῇ μέχρι τῆς 29ης Αὐγούστου 1974. 5

Ὡς ἐκ τούτου, λόγῳ τῆς συγκυρίας τῆς ἡμερομηνίας κατὰ τὴν ὁποίαν ἐλήφθη ἡ ἀπόφασις τοῦ Ὑπουργικοῦ Συμβουλίου, ἔτυχον ἀνίσου μεταχειρίσεως οἱ μέλλοντες νὰ σπουδάσουν εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ, κατὰ τὸ ἀκαδημαϊκὸν ἔτος 1974–1975, στρατεύσιμοι, οἵτινες εἶχον συμπληρώσει περίοδον θητείας πέραν τῶν εἰκοσιτεσσάρων μηνῶν, ἀναλόγως τοῦ ἐὰν εἶχον ἢ δὲν εἶχον ἐγγραφῇ πρὸς τοῦτο μέχρι τῆς ὡς ἄνω ἡμερομηνίας, ἤτοι τῆς 29ης Αὐγούστου 1974. 10 15

Τὸ ἐδάφιον (1) τοῦ ἄρθρου 28 τοῦ ἡμετέρου Συντάγματος ἐπιτάσσει ὅτι: "*Πάντες εἶναι ἴσοι ἐνώπιον τοῦ νόμου, τῆς διοικήσεως καὶ τῆς δικαιοσύνης καὶ δικαιοῦνται νὰ τύχωσι ἴσης προστασίας καὶ μεταχειρίσεως*" (πρβλ. ἄρθρ. 4 τοῦ Συντάγματος τῆς Ἑλλάδος τοῦ 1975, ὡς καὶ ἄρθρ. 3 τοῦ Συντάγματος τῆς Ἑλλάδος τοῦ 1952). 20

Αἱ διοικητικαὶ ἀρχαὶ "ὀφείλουν νὰ ἀπέχουν ἀνίσου ἐφαρμογῆς τῶν κανόνων Δικαίου" καὶ εἰς τὸ καθῆκον των τοῦτο "εὑρίσκεται καὶ τὸ ὅριον τῆς τυχὸν ἐκ τοῦ νόμου ἐπιτρεπομένης εἰς αὐτὰς 'διακριτικῆς εὐχερείας', εἴτε πρόκειται περὶ κανονιστικῶν εἴτε περὶ ἀτομικῶν πράξεων" (βλ. Σβώλου–Βλάχου, Τὸ Σύνταγμα τῆς Ἑλλάδος, 1954, Τόμος Α, σ. 185, 186). Εἶναι δὲ σαφὲς ὅτι "..... ὁ διὰ τῆς κανονιστικῆς πράξεως τιθέμενος κανὼν δικαίου ὑπόκειται εἰς τὴν δέσμευσιν ἐκ τῆς περὶ ἰσότητος συνταγματικῆς διατάξεως καθ' ἣν μοῖραν καὶ ὁ τυπικὸς νόμος" (βλ. Στασινοπούλου, Δίκαιον τῶν Διοικητικῶν Πράξεων, 1951, σ. 351). 25 30

Ἡ ἀρχὴ τῆς ἰσότητος δὲν ἀποκλείει βεβαίως τὴν δημιουργίαν διακρίσεων ἐφ' ὅσον συντρέχουν ἐπαρκεῖς λόγοι. Εἰς τὴν παροῦσαν ὅμως ὑπόθεσιν οὐδεὶς ἐπαρκὴς λόγος ἀνεφέρθη δυνάμενος νὰ δικαιολογήσῃ διατὶ οἱ προτιθέμενοι νὰ σπουδάσουν, κατὰ τὸ ἀκαδημαϊκὸν ἔτος 1974–1975, εἰς τὸ ἐξωτερικὸν στρατεύσιμοι, οἱ συμπληρώσαντες πέραν τῆς εἰκοσιτετραμήνου θητείας, διεχωρίσθησαν εἰς δύο κατηγορίας· τοὺς προνομιούχους οἵτινες θὰ ἀπελύοντο *διότι ἔτυχε νὰ εἶχον ἐξασφαλίσει ἐγγραφὴν μέχρι τῆς 29ης Αὐγούστου* 1974, ὅτε ἐλήφθη ἡ σχετικὴ ἀπόφασις τοῦ Ὑπουργικοῦ 35 40

Συμβουλίου, καὶ τοὺς δυσμενῶς ἐπηρεαζομένους οἵτινες δὲν θὰ ἀπελύοντο διότι δὲν ἔτυχε νὰ ἔχουν ἐξασφαλίσει ἐγγραφὴν μέχρι τῆς ὡς ἄνω ἡμερομηνίας. Τὸ αὐθαίρετον τῆς τοιαύτης διακρίσεως καταδεικνύεται ἔτι περισσότερον ὅταν ἀναλογισθῇ τις ὅτι οἱ 5 τυχόντες προνομιακῆς μεταχειρίσεως δὲν θὰ ἀπελύοντο πρὸ τῆς ἐνάρξεως τοῦ ἀκαδημαϊκοῦ ἔτους 1974–1975 εἰς ἑκάστην περίπτωσιν, μέχρι δὲ τῆς τοιαύτης ἐνάρξεως ἦτο δυνατὸν διὰ τοὺς δυσμενῶς ἐπηρεαζομένους νὰ ἐξασφαλίσουν ἐγγραφὴν διὰ σπουδὰς διὰ τὸ ἴδιον ἀκαδημαϊκὸν ἔτος· διὰ μερικοὺς δὲ ἐξ αὐτῶν, ὡς τοὺς προτι- 10 θεμένους νὰ σπουδάσουν ἐν Ἑλλάδι, ἦτο ἀδύνατον νὰ εἶχον ἐγγραφῆ πρὸ τῆς 1ης Σεπτεμβρίου 1974.

Ἐν ὄψει τῶν ἀνωτέρω ἐξήτασα τὸ ἐνδεχόμενον ἑρμηνείας τῆς ὑποπαραγράφου δ (ι) τῆς παραγράφου 1 τῆς σχετικῆς ἀποφάσεως τοῦ Ὑπουργικοῦ Συμβουλίου κατὰ τρόπον διὰ τοῦ ὁποίου 15 θὰ ἀπεφεύγετο ἡ παραβίασις τῆς περὶ ἰσότητος συνταγματικῆς διατάξεως, διότι διάταξις δεκτικὴ πολλαπλῆς ἑρμηνείας "δέον νὰ ἑρμηνευθῇ ἐν τέλει κατὰ τὸν τρόπον ἐκεῖνον, ὅστις ἀποφεύγει πᾶσαν ἀντίφασιν πρὸς τὸ Σύνταγμα" (βλ. Τσάτσου, Τὸ Πρόβλημα τῆς Ἑρμηνείας ἐν τῷ Συνταγματικῷ Δικαίῳ, 1970, σ. 26). Κατέ- 20 ληξα, ὅμως, εἰς τὸ συμπέρασμα ὅτι ἑρμηνεία τοῦ κειμένου τῆς ἐν λόγῳ ὑποπαραγράφου δ (ι), ἥτις θὰ ἐπέτρεπε τὴν ἀπόλυσιν στρατευσίμων οἱ ὁποῖοι δὲν εἶχον ἤδη ἐγγραφῆ εἰς Πανεπιστήμια ἢ Ἀνωτάτας Σχολὰς τοῦ ἐξωτερικοῦ μέχρι τῆς 29ης Αὐγούστου 1974, θὰ ἀπετέλει "ἑρμηνείαν ὑπερφαλαγγίζουσαν τὴν λεκτικὴν 25 αὐτοῦ διατύπωσιν" πρᾶγμα τὸ ὁποῖον δὲν εἶναι ἐντὸς τῶν ὁρίων τῆς ἑρμηνευτικῆς εὐχερείας τοῦ Δικαστηρίου (βλ. Τσάτσου, ἔ.ἀ., σ. 27).

Ἡ ἐν προκειμένῳ ἀπόφασις τοῦ Ὑπουργικοῦ Συμβουλίου εἶναι κανονιστικὸν διάταγμα, ἐν τῇ ἐννοίᾳ τοῦ ἄρθρου 54 (ζ) τοῦ Συν- 30 τάγματος, ἐκδοθὲν δυνάμει τῆς Περὶ Ἐθνικῆς Φρουρᾶς νομοθεσίας. Δεδομένου ὅτι ἡ ὑποπαράγραφος δ (ι) τῆς παραγράφου 1 τῆς ἀποφάσεως αὕτης δὲν ἐπιδέχεται ἑρμηνείαν ἐναρμονίζουσαν ταύτην πρὸς τὴν περὶ ἰσότητος ἀρχήν, προκύπτει, βάσει τῶν ὅσων ἤδη ἀνεφέρθησαν, ὅτι τὸ θέμα τῆς ἀπολύσεως τῶν ἐπιθυμούντων νὰ 35 σπουδάσουν εἰς τὸ ἐξωτερικὸν στρατευσίμων ἔτυχε ρυθμίσεως κατὰ τρόπον συνεπαγόμενον ἄνισον μεταχείρισιν διὰ στρατευσίμους ὡς οἱ ἐφεσείοντες καί, κατὰ συνέπειαν, ἡ ἐπίδικος ἄρνησις τῶν ἐφεσιβλήτων νὰ ἀπολύσουν ἐκ τῶν τάξεων τῆς Ἐθνικῆς Φρουρᾶς τοὺς ἐφεσείοντας, προκύψασα, κατ' ἐφαρμογὴν τῆς εἰρη- 40 μένης ρυθμίσεως, παρὰ τὴν ἐγγραφὴν των ἐν τῷ μεταξὺ διὰ πανεπιστημιακὰς σπουδὰς ἐν Ἑλλάδι, ἀποτελεῖ διοικητικὴν πρᾶξιν ἀντιβαίνουσαν πρὸς τὸ προαναφερθὲν ἄρθρον 28 (1) τοῦ Συντάγ-

ματος καὶ ὡς ἐκ τούτου δέον νὰ κηρυχθῇ ἄκυρος καὶ ἐστερημένη οἱουδήποτε ἀποτελέσματος.

Ὑπὸ τὸ φῶς ἁπάντων τῶν ἀνωτέρω ἡ παροῦσα ἔφεσις δέον νὰ γίνῃ ἀποδεκτή.

ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ, ΠΡ.:– Ἐν ὄψει τοῦ περιεχομένου τῶν ἐκδοθεισῶν ἀποφάσεων, ἡ ἔφεσις τῶν ἐφεσειόντων γίνεται ἀποδεκτή, κατὰ πλειοψηφίαν, καὶ συνεπῶς ἡ ἐπίδικος διοικητικὴ πρᾶξις κηρύττεται ἄκυρος καὶ ἐστερημένη οἱουδήποτε ἀποτελέσματος. Δὲν προτιθέμεθα ὅμως νὰ ἐπιδικάσωμεν ἔξοδα εἰς βάρος τῶν ἐφεσιβλήτων.

Ἔφεσις γίνεται ἀποδεκτή.

This is an English translation of the Greek text appearing at pp. 290-320, *ante*.

Construction of documents—Rules of Construction—Construction of the word "discharges" as same is used in the sub judice *decision of the Council of Ministers—Should be interpreted as referring not only to the present but to the future.*

Military service—National guard—Decision concerning discharge of conscripts in regular service......... "who have secured admission in Universities or Institutions of Higher Education abroad"—To whom it refers—Construction of the word "discharges" as same is used in the sub judice *decision of the Council of Ministers.*

This is an appeal against the judgment of one of the Judges of this Court (reported in this Part at p. 1 *ante*) whereby the recourse of the appellants against the refusal or omission of the respondents to discharge them from the ranks of the National Guard was dismissed.

The validity or not of the *sub judice* decision depends on the construction to be given to the word "discharges" appearing in the first paragraph of the decision of the Council of Ministers dated 29th August, 1974 which runs as follows:

"1. The Council of Ministers in exercise of its powers granted by s. 9 (1) of the National Guard Laws, 1964 to 1968, by this decision hereby discharges—

(a) All reservists of age groups 1958 to 1964 both inclusive.

(b) All reservists who are attending Universities or Schools of Higher Education abroad.

(c) All reservists who are proved to reside permanently abroad.

(d) Those conscripts who are on regular service and have completed a period of service of more than 24 months, who satisfy the Minister that:-

(i) They have secured admission in Universities or Schools of Higher Education abroad;

(ii) they have, following selection by a Committee approved by the Council of Ministers and for a period not shorter than one academic year, been granted scholarships for University or post graduate studies at Universities or Schools of Higher Education or Institutions equivalent to Universities abroad so that they may be able to attend them during the next academic year 1974–75.

2. The time of discharge of those under (b) and (d) (i) and (ii) above will be determined by the Minister according to the time of commencement of the academic year in each case."

The first applicant secured admission in the School of Philosophy of the Athens University on the 12th September, 1974; the second applicant secured admission in the Law School of the same University on the 29th September, 1974 and the third applicant secured admission in the Highest School of Economics and Commercial Sciences on the 25th September, 1974.

Counsel for the appellants argued that the correct interpretation of the decision of the Council of Ministers implies the right to discharge all the conscripts who would have satisfied the Minister that they had secured admission in Universities or Schools of Higher Education abroad, at any time until the taking of the decision for their discharge. It was further stressed that the decision of the Council of Ministers does not specify a date of discharge and does not refer only to the conscripts who had secured admission prior to the date of issue of the above decision. On the contrary, counsel appearing for the respondents contended that the said decision correctly interpreted within the rules of grammatical interpretation and the meaning of the words, includes only those of the conscripts who had already secured admission in Universities by the 29th August, 1974.

Held, by majority (Stavrinides, L. Loizou and Hadjianastassiou), Triantafyllides P. and A. Loizou, dissenting:

(a) The word "discharges" as same is used in the *sub judice* decision of the Council of Ministers should be interpreted as not only referring to the present but to the future. Applicants come within the provisions of the decision of the Council of Ministers and consequently they ought to have been discharged. The refusal of the Minister of Interior to discharge the appellants was contrary to the provisions of the Constitution and the laws and was taken in excess of power.

(b) *Held, per Triantafyllides, P. and A. Loizou, J. in their dissenting judgment:* Rightly the respondents refused to discharge the appellants on the strength of paragraph d (i) of the said decision of the Council of Ministers.

(c) *Held, per Triantafyllides, P.:* The matter of the discharge of the conscripts has been regulated in a manner entailing unequal treatment for conscripts such as the appellants and, as a result, the *sub judice* refusal of the respondents to discharge from the National Guard the appellants, which has occurred due to the state of things created by the aforementioned "order" and notwithstanding their admission in the meantime for University studies in Greece, constitutes an administrative act violating Article 28.1 of the Constitution; and for this reason it should be declared to be *null* and *void* and of no effect whatsoever.

Appeal allowed.

Cases referred to:

Grey v. *Pearson* [1857] 6 H.L. Cas. 61;

Mattison v. *Hart* [1854] 14 C.B. 357;

Caledonian Ry. Co. v. *North British Ry. Co.* [1881] 6 App. Cas. 114;

Vacher and Sons Ltd. v. *The London Society of Compositors* [1913] A.C. 107;

Cooke v. *Charles A. Vogeler Company* [1901] A.C. 102;

Ellerman Lines Ltd. v. *Murray* [1931] A.C. 126;

Karayiannis v. *The Republic* (1974) 3 C.L.R. 420;

Mikrommatis and The Republic, 2 R.S.C.C. 125;

Meletiou and Others v. *District Labour Officer* (1975) 2 C.L.R. 21;

Decisions of the Greek Council of State Nos. 81/1951, 749/33, 1735/53, 452/33, 1645/55, 164/43, 1229/59.

Appeal.

Appeal against the judgment* of a Judge of the Supreme Court of Cyprus (Malachtos, J.) given on the 11th January, 1975 (Case No. 384/74) whereby applicants' recourses against 5 the refusal and/or omission of the respondents to release applicants from the National Guard was dismissed.

L. Papaphilippou, for the applicants.

R. Gavrielides, Counsel of the Republic, for the respondents.

10 *Cur. adv. vult.*

TRIANTAFYLLIDES, P.: In the present case each of us will pronounce his opinion separately; the first to do so will be Mr. Justice Hadjianastassiou, to be followed by Justices A. Loizou, Stavrinides, L. Loizou and, lastly, myself.

15 HADJIANASTASSIOU, J.: Irrespective of the constitutional structure of the Article referring to the "Armed Forces of the Republic" the situation created in Cyprus after the events of December 1963 and the continuous threats of Turkey for invasion or activities directed against the independence and the 20 territorial integrity of the Island rendered necessary the organization of the defence of the Republic, by the creation of an army, capable of facing any foreign design and of strengthening by its presence the feeling of security of the citizens of the independent and sovereign Republic. (See "The National 25 Guard Laws 1964–1968").

The recent tragic events in Cyprus and the Turkish invasion manifested the important national mission of the National Guard which played the major róle in the defence of the Island.

As it appears from s. 3 (3) of Laws 1964–1968, the Council 30 of Ministers is vested with power to prescribe from time to time the strength of the Force in officers and other ranks.

As the defence of the country constitutes also an honourary duty, the fulfilment of military obligations is organized and governed by the National Guard legislation, and subject to the 35 provisions of sub-section (3), all citizens of the Republic shall, from the 1st day of January of the year in which they completed the 18th year of their age and until the 1st day of January of the year in which they completed the 50th year of their age,

* Reported in this Part at p. 1 *ante*.

be subject to the provisions of this Law and be liable to serve in the Force (s. 4(1)); and according to sub-section (2) the liability for service in the Force comprises liability for a term of service and liability in the reserve.

It should be noted that s. 5 (1), subject to the provisions of sub-section (4) provides: "every serviceman shall be under an obligation for military service the duration of which is 24 months unless the Council of Ministers by its relevant decision decides that it will be 18 months in relation to any class.

Provided that:

(a) After the lapse of one year's military service or whenever military efficiency and the needs of the country so permit or considerations of public interest so demand (see the text) the Council of Ministers may, by decision, published in the official Gazette of the Republic, abridge the period of military service to any period being not less than six months, either by age group or part thereof, or by areas or categories or in exceptional cases, by persons, on their application and due to special circumstances.

(b) The Council of Ministers may in any such decision for the abridgement of the period for military service specify that the servicemen to whom the decision refers complete their military service when the cause for the abridgement of the said period ceases to exist, and in such a case as soon as this cause ceases to exist the said conscripts are obliged to present themselves for the completion of their service."

By its decision No. 13391 dated 1/7/74, under the aforesaid proviso (a) to sub-section 1 of s. 5 of the National Guard Laws 1964–1968 the Council of Ministers decided to abridge the period of service to fourteen months of all those now serving in the National Guard irrespective of class, and of all those conscripts already called or to be called in the future for enlistment.

This decision was published in the 4th supplement to the Official Gazette of the Republic of 12/7/74 under Not. No. 64.

Further, this decision was communicated to the Chief of Staff of the National Guard by the Director-General of the Ministry of Interior and Defence by the following letter:

"I have been instructed by the Minister of Interior and Defence to send to you the enclosed copy of the Decision of the Council of Ministers No. 13391 dated 1.7.1974 by which the period of military service of all conscripts is 5 abridged to fourteen months.

You are requested to proceed to discharge all conscripts who have completed 14 months military service by the 20th of July 1974."

It is unnecessary to emphasize, that the said decision having 10 not been revoked continues to be in force, and consequently, according to this decision, those who have completed 14 months military service have completed their military obligation unless they have been called and are serving as reservists.

According to the provisions of s. 15 (1), the reserve of the 15 Force shall consist of:

"(a) those who have completed their term of service as provided in sections 5 and 12 being finally discharged from the Force;

(b) those discharged under sub-section 1 of section 9, 20 unless the Council of Ministers should otherwise direct in the relative decision;

(c) the servicemen who have served in the Force on a full-time or part-time basis, under s. 30;

(d) those who have served for more than six months in a 25 regular Cyprus Army or in a regula Allied Army in the last World War.

(2) All the above persons shall remain in the reserve until they attain the fiftieth year of their age."

As the applicants have completed their military service and 30 have not been discharged, as is provided under s. 5, they filed a recourse under Article 146 of the Constitution on the 16th November 1974 claiming the following relief:

A declaration that the omission and/or refusal of the respondents to discharge the applicants from the National Guard 35 is *null* and *void* and of no legal effect whatsoever and whatever has been omitted should be performed.

The real facts upon which the present application is based are as follows:

The applicants, as I have already mentioned, requested to be discharged but the respondents omitted or refused to discharge them. The first applicant was born on 29.3.1954 and was enlisted in the Nat onal Guard on 20.7.72 where he is serving until today as a sub-lieutenant. On 12.9.1974 he secured admission as a student of Philosophy in the University of Athens.

The second applicant was born on 3.2.1954 and was enlisted in the National Guard on 20.7.72 where he is serving until today as a sub-lieutenant. On 23.9.1974 he was admitted in the Athens University as a student of Law (Economics branch).

The third applicant was born on 19.8.1954 and was enlisted in the Force on 20.7.1972 where he is serving until today. On 25.9.1974 he was admitted as a student of the Athens Highest School of Economics and Commercial Sciences.

The fourth applicant was born on 4.6.1953 and was enlisted in the National Guard on 21.7.72 where he is also serving until today as a sergeant. On 10.10.1974 he was admitted as a student of the Athens Highest School of Economics and Commercial Sciences.

The application of the applicants was based on the following grounds of law:

1. The omission and/or refusal of the respondents to discharge the applicants amounts to excess or abuse of power in that it is contrary to the provisions of s. 5 of the National Guard Laws.

2. The omissions and/or refusals attacked discriminate against the applicants, in that, conscripts who had secured admission in the University before the 29.8.74 were discharged, whilst the said applicants were not discharged, because their admission in the Universities took place after the 29.8.74.

3. The respondents failed to take into account the fact that the applicants, whilst in actual service, particularly during wartime in Cyprus, could not possibly secure admission in the University before the 29.8.74.

4. The respondents failed to take into account the fact that the applicants would have been discharged on the 20.7.74, the date of the completion of their service, and that relying on this fact, they were expecting their discharge in order to secure admission in the University, when the Turkish invasion intervened and due to this they were not able to secure admission in the University.

5. The respondents acted in violation of every principle of law, when they decided the discharge of all those who had secured admission in the University before the 29.8.74 without rendering in advance facilities to the applicants for such admission.

The respondents filed an opposition against the application of the applicants, and the facts supporting the opposition are as follows:

....

3. Applicants No. 1, 2 and 3 have completed 24 months military service on the 20th July 1974, and applicant No. 4 on 21st July 1974.

4. On the 20th July, 1974, by virtue of a decision of the Council of Ministers and relevant proclamation of the Minister of Interior all officers and soldiers of the National Guard who were subject to military service were called to perform their obligation as reservists.

5. At the meeting of the 19th September, 1974, the Council of Ministers confirmed that, "the obligation for service in the National Guard of the conscripts who continue serving in the Force after the termination of their full term of service is an obligation for service as reservists as is the obligation for service of the reservists who were called and serve in the Force".

6. By its decision dated 29 August, 1974, the Council of Ministers discharged those conscripts who had served regularly and had completed a period of military service of over twenty four months, and who had satisfied the Minister that they had secured admission in Universities or Higher Schools abroad.

7. The applicants were not enrolled as students in a University or Higher School on the 29th of August, 1974.

As the legislation establishes the basic principle on which the defence of the country is founded, that is, the general and obligatory service of the citizens of the Republic, this evidently includes any kind of personal service appropriate for this purpose. Within the frame of the general obligation for service, the legislature recognizes to each one of the conscripts rights, and offers legal means for his protection, because the relation deriving from the military service is a relation of public law, upon which the principles of the legality of the acts of the administration apply. (See A. I. Svolou, G. K. Vlahou "The Constitution of Greece" Part 1, Vol. A, page 264). The refusal and/or omission of the administration to order the termination of the military obligation is subject to recourse (C.S. 81/1951).

When the Turkish invasion started on the 20th of July (as I have already mentioned), all classes of reservists were called for service. The call-up was general for the whole state, and it was effected by repeated broadcasts, as any other communication of this call-up was impossible on that day, due to the abnormal situation. It is notable that, under s. 16 of the National Guard Laws, "the call-up of reservists shall be made by decision of the Council of Ministers" and publication of this decision in the Official Gazette of the Republic is not required, as in the cases of call-up under s. 6 and 6 (a) (2), or the discharge of conscripts under s. 9 (1).

Taking into account the conditions existing on that date, and in view of the fact that neither side disputed the legality of the call-up of reservists, I do not think that it is necessary, for the purposes of the present case, to express my views upon this subject.

As I have already mentioned, the period of service of each serviceman is governed by the relevant provisions of the National Guard Laws and by the decisions of the Council of Ministers applicable in the particular case. As I have already indicated, according to s. 5 (1), the period of service of the applicants was two years, after the lapse of which, they should have been discharged, as having completed their military service, according to s. 4 (2). It could be said though, that, due to the abnormal situation, these applicants have not been discharged and they continue their service, apparently so as to carry out their obligation as reservists. On the 29th of August, 1974, the Council

of Ministers, having in mind the provisions of the proviso to s. 5 (1) by its decision No. 13453, published in the 4th supplement to the Official Gazette of the Republic of 30.8.1974, under Not. No. 1127 and exercising its powers granted by s. 9 (1) of the National Guard Laws 1964-1968 decided the discharge of the reservists and other conscripts. The said decision is as follows:

"1. The Council of Ministers, exercising its powers granted by s. 9 (1) of the National Guard Laws 1964-1968, by this decision hereby discharges:

(a) all the reservists of age groups 1958 to 1964 both inclusive;

(b) all the reservists who are attending Universities or Schools of Highest Education abroad;

(c) all the reservists, who are proved to reside permanently abroad;

(d) the conscripts who are on regular service and have completed a period of service of more than 24 months, and satisfy the Minister that:-

(i) They have secured admission in Universities or Schools of Higher Education abroad;

(ii) they have, following selection by a Committee approved by the Council of Ministers, and for a period not shorter than one academic year, been granted scholarships for Universities or Schools of Higher Education or Institutions equivalent to Universities abroad so that they may be able to attend the above during the next academic year 1974-1975.

2. The time of discharge of those under (b) and (d) (i) and (ii) above will be determined by the Minister according to the time of commencement of the Academic Year in each case".

It would have been useful to emphasize that despite the fact that the Council of Ministers had before it a submission of the Minister of Interior for the discharge of reservists and other conscripts nevertheless no mention is made anywhere in the said submission for the discharge of conscripts, who had secured

admission in Universities and Schools of Higher Education. It would have been right to emphasize that the Council of Ministers having in mind that the education in Universities or Schools of Higher Educations is of public interest decided to discharge those conscripts, who had secured admission in Universities or Schools of Higher Education abroad despite the fact that the abnormal situation continued.

In my opinion this decision supports the view which I had stated earlier that is to say that the Council of Ministers attached and still attaches particular importance to the subject of Higher Education and this appears clearly in its new decision dated 10.9.1974. This decision which has been published in the 4th supplement to the Official Gazette of the Republic of 27.9.74 under Not. No. 1135 is as follows:

> "The Council of Ministers, exercising its powers granted by s. 9 (1) of the National Guard Laws 1964–1968, by this decision hereby discharges:
>
> (a) All the reservists who are already attending Schools of Higher Education in Greece, such as the Centres of Higher Technical Education, the Higher School of Sub-Mechanics, the S.B.I.E., the Sivitanidion, the Pedagogical Academies of Greece, approved Schools of Higher Education in Greece e.t.c.
>
> It is hereby decided that the corresponding Schools of England and other countries be considered as Schools of Higher Education for the purposes of the decision of the Council of Ministers No. 13453."

Following that the Council of Ministers ordered the discharge of a number of conscripts to attend Public Schools of Commercial Navy in Greece and the decision under No. 13528 dated 26.9.1974 is as follows:

> "The Council of Ministers, exercising its powers granted by s. 9 (1) of the National Guard Laws 1964–1968, by this decision hereby discharges the following conscripts who have been selected to attend Public Schools of Commercial Navy in Greece and have already completed a period of service in the National Guard of more than 24 months".

I must also emphasize that there was published in the Official Gazette of the Republic Law 49/1974, which came into force

on the 1st September 1974 and imposed temporary restrictions to the right to leave permanently or temporarily the Republic.

According to s. 4 the Minister grants exit permits to the following citizens of the Republic:

5 "(h) those who have completed their military obligation in the National Guard and have proved to have secured admission, or attend Universities or Schools of Higher or Highest Education abroad".

From my reference to the two decisions and to law 49/74, 10 which was published in the 1st Supplement to the Official Gazette of the Republic of 1.10.74, I think I may come to the safe conclusion, that the purpose and the intention of the Council of Ministers was the promotion of the ideal of higher education. It is also noteworthy that no mention is made regarding the 15 date of enrolment, particularly so para. (h) of s. 4 refers to only those who "have secured admission or attend Universities", without specifying date of admission, despite the fact that the decision of the Council of Ministers refers to those who have proved to have secured admission.

20 I am of the view that I have cited quite a lot to prove that the Council of Ministers had no intention by its decision dated 29.8.1974 to benefit only those conscripts who had the privilege to enrol in Schools of Higher Education earlier, in contrast to those, who continue to serve their country during its most 25 critical time for more than 24 months.

It is necessary to emphasize that the Supreme Court "has exclusive jurisdiction" according to Art. 146 of the Constitution "to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or 30 person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person".

The Court of first instance after taking into account, during 35 the hearing of the case, the arguments of both counsel, dismissed the recourse because in its view the respondents did not act in excess or abuse of power when they did not discharge the applicants from the National Guard.

The present appeal was, in compliance with the procedural 40 rules, made in accordance with the provisions of s. 11 (1) of

the Administration of Justice (Miscellaneous Provisions) Law, 1964 against the decision of a Judge of the Supreme Court, by which the recourse of the appellants against the refusal or omission of the respondents to discharge the applicants from the National Guard was dismissed. 5

It was argued by counsel for the appellants before the Full Bench of the Supreme Court, that the correct interpretation of the decision of the Council of Ministers implies the right to discharge all conscripts, who would have satisfied the Minister that they had secured admission in Universities or Schools of 10 Higher Education, at any time until the taking of the decision for their discharge. Furthermore, it was emphasized that the decision of the Council of Ministers does not specify a date of discharge and it does not refer only to the conscripts who had secured admission before the issue of the aforesaid decision. 15 On the contrary, it was argued by counsel for the respondents that the decision correctly interpreted within the rules of grammatical interpretation and the meaning of the words, includes only those of the conscripts who had already secured admission in Universities by the 29th August 1974. 20

It was stated in a number of cases that the purpose of interpreting the law or any other written document is to enable us to understand the meaning of the law or the written text.

It would have been correct though to emphasize, that in the present case we try to grasp the true meaning of the decision 25 of the Council of Ministers from the grammatical rules and the natural meaning of the words.

In my opinion though, the meaning rendered by the grammatical interpretation is not always safe, as it also appears in cases of English Courts which I will cite in my judgment. Accor- 30 ding to Odgers, Construction of Deeds and Statutes, 5th Edition, there are three methods, which the English Courts may adopt. One of these methods is known as the "literal", that is to say the accurate or literal interpretation, which aims, as I have already mentioned, in finding and rendering the true meaning 35 of the law. In the case of *Grey* v. *Pearson* [1857] 6 H.L. Cas. 61 Lord Wensiaydale emphasized in the House of Lords that: "In construing wills and indeed statutes and all written instruments, the grammatical and ordinary sense of the words is to be adhered to, unless that would lead to some absurdity or 40 some repugnancy or inconsistency with the rest of the instru-

ment, in which case the grammatical and ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further".

This golden rule, as it was called by Jervis C.J. in the case of *Mattison* v. *Hart* [1854] 14 C.B. 357, p. 385, was approved by Lord Blackburn in the case of *Caledonian Ry. Co.* v. *North British Ry. Co.* [1881] 6 App. Cas. 114. He said at p. 131: "I agree in that completely, but in the cases in which there is a real difficulty this does not help us much; because the cases in which there is a real difficulty are those in which there is a controversy as to what the grammatical and ordinary sense of the words used with reference to the subject matter is. To one mind it may appear that the most that can be said is that the sense may be what is contended by the other side, and that the inconsistency and repugnancy is very great, that you should make a great stretch to avoid such absurdity, and that what is required to avoid it is a very little stretch or none at all. To another mind it may appear that the words are perfectly clear—that they can bear no other meaning at all, and that to substitute any other meaning would be not to interpret the words used, but to make an instrument for the parties—and that the supposed inconsistency or repugnancy is perhaps a hardship—a thing which perhaps it would have been better to have avoided, but which we have no power to deal with".

Of course, if the Court is unable to accept counsel's argument that there is inconsistency and absurdity, the rule I have already referred to, cannot be applied. It would be also useful to mention, that the words used by Lord Blackburn were echoed and in other cases before the Courts. The case of *Vacher and Sons Ltd.* v. *The London Society of Compositors* [1913] A.C. 107 is an example of the employment of all three methods of approach of the subject of interpretation. In this case Lord Macnaghten adopted the golden rule from *Grey* v. *Pearson* (*supra*). Lord Atkinson followed the literal approach and the case of *Cooke* v. *Charles A. Vogeler Company* [1901] A.C. 102 p. 107, while Lord Moulton discussed the history of the statute and applied the mischief method.

So as to understand the difficulties, that the rules of interpretation present, I refer to the case of *Ellerman Lines Ltd.* v. *Murray* [1913] A.C. 126, which expresses the conflicting views of judges on this subject. In the Court of Appeal, Scrutton and Greer, L.JJ. were of the opinion that s. 1 of the Merchant

Shipping Law of 1925 was clear and unambiguous and refused to call in aid the preamble. Slesser L.J., dissenting, quoted Dyer C.J. as to the utility of the preamble and relied on the mischief of the Act. In the House of Lords, Lord Dunedin was of the view that the Act should be taken as it stood and that there was no ambiguity; Lord Blanesburgh relied, for the purpose of interpretation, on the mischief of the Act, while Lord MacMillan was of the view that there was no ambiguity and that therefore there was no need to resort to extraneous aids, such as the preamble.

The review of the case-law and my reference to the rules of interpretation were made for the purpose of demonstrating the numerous difficulties, the judges are facing in applying the rules of interpretation in each particular case.

At first, I must emphasize that the administrative act is, as stated on several times, an expression of will. So as to become able to create lawful results, this will should cease to be "internum", *i.e.* it must be declared, and the validity of the administrative act takes effect as from its publication. Generally the administrative acts take effect from their issue, and they have no retrospective effect. Therefore, they do not apply with regard to relations created before their issue. This principle applies upon personal and regulatory acts (749/33, 1735/53, 452/33, 1645/55).

The aforesaid principle of the non retrospectivity of the administrative acts is justified from the fact that the competency of the administrative organs should be exercised in view of the legal or real situation existing at each time: 164/43.

It would have been useful to repeat that: " The rule governing the administrative act also specifies the time as from which the administrative act is capable of bringing about in the legal world the change corresponding to its contents, that is to say the time of the commencement of the formal effect of the administrative act. However, the question of the time extent that this change may have, that is the question of the determination of the time limits within which the legal effect of the act may operate, that is commence and expire is a different matter. This refers to the commencement and the termination of the essential effect of the administrative act. With regard to the coming or the commencement of the legal effects of the act we observe that this must at first, coincide with the commencement

of its formal validity. Nevertheless the occurrence of the results of the act may be transferred in time either to the future or to the past. The commencement of the legal effects of the act is transferred to the future when a suspensive clause or time limit was added. It is transferred to the past, when the act was armed with retrospective effect". (See Stassinopoullos on Law of Administrative Act 1951, page 368).

It is also known that upon the acts which are left to the discretionary powers of the administration it is possible to impose additional terms, that is to say, conditions, time limits and terms which are in accord with the purpose of the law, but the discretionary power of the administration cannot be exercised conditionally (C.S. 1229/59, *Karayiannis* v. *Republic* (1974) 3 C.L.R. 420).

Coming back to the present case and in view of the aforesaid findings, I wish to observe that, despite the fact that the decision of the Council of Ministers came into force as from the date of its publication in the Official Gazette of the Republic, *i.e.* as from the 30th August 1974, nevertheless it did not produce all the legal effects as from that same date. These legal effects with regard to sub-paragraphs (b) and (d) of the 1st paragraph, *i.e.*

(a) (discharges) all the reservists of age groups 1958-1964 both inclusive;

(b) (discharges) all the conscripts who are on regular service and have completed a period of service of more than 24 months and satisfy the Minister that:

(i) They have secured admission in Universities or Schools of Higher Education abroad e.t.c.

is obvious that they take effect at a future time, which the Minister of Interior will specify (see para. 2 of the decision). Particularly with regard to those conscripts who are on regular service and have completed a period of military service of more than 24 months their discharge will take effect provided that:

(a) they will satisfy the Minister of Interior that they had secured admission in a University or School of Higher Education abroad and

(b) they must attend at the University or School of Higher Education "during the next academic year 1974-75".

It is important to emphasize that, despite the fact that no time limit is fixed regarding the admission in Universities or Schools of Higher Education abroad, from the wording of the decision it is implied that, such admission must have been made at a time prior to the application for discharge and in such a manner so that the candidates would be able to attend in the University or School of Higher Education during the academic year 1974–75. Therefore, the argument that such admission ought to had been made at least before the 29th of August 1974 is deceptive. Because in my opinion, nowhere in the wording of the decision such a restriction appears, neither can such a conclusion be inferred from the said wording.

On the contrary, by the provisions of para. 2 that "the Minister of Interior specifies the time of the discharge according to the time of the commencement of the academic year" one may conclude that it is the academic year that is of the utmost importance and that this will also determine the time of entering the University or the School of Higher Education.

For all the aforesaid reasons, and in addition having in mind the rules of interpretation and believing that, from the grammatical aspect, the tense of the verb "discharges" although present tense, does not necessarily mean only "discharges now" but this may also mean an act of repetition extending its action to the future as well, by the addition of such adverbs as "always" "occasionally", "usually", "at times" "whenever" e.t.c., I may conclude that the appellants fall within the provisions of the decision of the Council of Ministers, and therefore, they should have been discharged. The refusal of the Minister of Interior to discharge the appellants was contrary to the provisions of the Constitution and or the laws and was made in excess or abuse of his powers.

I am, therefore, bound to declare this decision *null* and *void* and allow the appeal.

A. LOIZOU, J.: This is an appeal against the decision of a judge of this Court dismissing the recourse of the appellants against the refusal and or omission of the respondents to discharge them from the ranks of the National Guard.

The facts relevant to the present appeal are as follows:

The first appellant was born on the 29.3.54 and was enlisted in the National Guard on 20.7.72 where he is serving until

today as sub-lieutenant. On 12.9.74 he secured admission as a student of Philosophy in the Athens University.

The second appellant was born on 3.2.54 and was enlisted in the National Guard on 20.7.72 where he is serving until 5 today as sub-lieutenant. On 23.9.74 he secured admission as a student in the Law School of Athens University (Economics Branch).

The third appellant was born on 19.8.54 and was enlisted in the National Guard on 20.7.72 where he is serving until 10 today. On 25.9.74 he secured admission in the Highest School of Commercial Sciences of the Athens University.

The fourth appellant was born on 4.6.53 and was enlisted in the National Guard on 21.7.72 where he is serving until today as sergeant. On 10.10.74 he secured admission in the 15 Highest School of Commercial Sciences of the Athens University.

According to the provisions of s. 5 (1) of the National Guard Laws 1964–1968 the duration of the military service is specified as 24 months, but according to paragraph (a) of the said section —"After the lapse of one year's military service or whenever 20 the military efficiency and the needs of the country so permit or considerations of public interest so demand, the Council of Ministers may, by decision published in the Official Gazette of the Republic abridge the period of military service to any period being not less than six months, either by age group or 25 part thereof or by areas or categories or in exceptional cases, by persons, on their application or because of special circumstances".

The Council of Ministers by its decision No. 13391 dated 1.7.74 decided by virtue of the aforesaid proviso to abridge and 30 has thereby abridged the period of service to fourteen months of all conscripts then serving in the National Guard, irrespective of class, and of all the conscripts already called or to be called in the future for military service. This decision was published in the 4th Supplement to the Official Gazette of the Republic 35 of 12.7.74 under Not. No. 64.

The four appellants would not have therefore enjoyed the benefits of the aforesaid decision as they had already served in the National Guard for a period of 24 months from the date of their enlistment and they would have been discharged from 40 the Force as regards the first three on the 19th, and as regards the fourth on the 20th of July 1974.

As it is customary, a certificate of discharge would have then been issued to each one of them, whereupon by virtue of s. 15 (1) (a) as amended by Law 44/65 s. 5 they would constitute the reserve of the Force as having completed their obligation for military service in accordance with the Law. 5

Before the appellants were discharged in accordance with the abovementioned, tragic events occurred in Cyprus, having as a climax the Turkish invasion in the Republic on 20.7.74. The proclamation for general mobilization of reserve officers, and soldiers, and of untrained persons with special skill was 10 a natural consequence and an act incumbent in the circumstances. Due to this, the service of the appellants was considered as an obligation for service as reservists, according to the decision for general mobilization, and this position is not disputed in the present appeal, by either party. 15

On 29.8.74 the Council of Ministers by its decision No. 13453, published in the 4th Supplement to the Official Gazette of the Republic of 30.8.74 under Not. No. 73 and exercising its powers granted by s. 9 (1) of the National Guard Laws of 1964, decided the discharge of conscripts. The said decision (*Exh.* 1) is as 20 follows:

"1. The Council of Ministers exercising its powers granted by s. 9 (1) of the National Guard Laws 1964 to 1968, by this decision hereby discharges—

(a) All the reservists of age groups 1958 to 1964 25 both inclusive.

(b) All the reservists who are attending Universities or Schools of Higher Education abroad.

(c) All reservists who are proved to reside permanently abroad. 30

(d) The conscripts who are on regular service and have completed a period of service of more than 24 months, and satisfy the Minister that:

(i) They have secured admission in Universities or Schools of Higher Education abroad. 35

(ii) They have, following selection by a Committee approved by the Council of Ministers and for a period of not less than one academic

year, been granted scholarships for University or post graduate studies at Universities or Schools of Higher Education or Institutions equivalent to Universities abroad so that they may be able to attend during the next academic year 1974–75.

2. The time of discharge of those under (b) and (d) (i) and (ii) above will be determined by the Minister according to the time of commencement of the Academic year in each case".

In the course of the hearing in the Court below, a number of grounds of law have been raised by the appellants in support of their recourse. It was argued, *inter alia*, that their obligatory staying in the service constitutes inhuman and unconstitutional treatment as it violates basic Articles of the Constitution like Article 8, that no person shall be subjected to torture or to inhuman or degrading punishment or treatment, Article 10.2, that no person shall be forced to perform compulsory labour, Article 11, that every person has the right to liberty and security of person, Article 13, in relation to the right to move freely throughout the territory of the Republic, Article 15, that the private and family life of every person should be respected, Article 19 regarding the freedom of speech and expression in any form, Article 20, in relation to the right of education, Article 21 regarding the right to peaceful assembly, Article 25 regarding the right to practise any profession or to carry on any occupation, trade or business, Article 27, regarding the right to strike and as a result Article 28 that all persons are equal before the law, the administration and justice.

Rightly though, during the present appeal, the points in issue were confined to two:

1st: That the correct interpretation of the aforesaid decision is that, entitled to be discharged, were all the conscripts who would satisfy the Minister that at any time prior to the taking of the decision for their discharge they had secured admission in Universities or Schools of Higher Education abroad; and not only those who had secured admission before the date of the issue of the aforesaid decision, and

2nd: In case it would be regarded that by the aforesaid decision entitled to be discharged, were only the conscripts

who at the time of its issue had already secured such admission, then the *sub judice* decision is unconstitutional as being contrary to Article 28 of the Constitution in the sense that it discriminates between soldiers admitted in Universities and Schools of Higher Education before the 29.8.74 and soldiers who would secure admission after the said date.

Regarding the first issue the argument put forward by the appellants was that the word "discharges" conscripts on regular service and .... those who satisfy the Minister that they have secured admission in Universities or Schools of Higher Education abroad, means discharges on each occasion upon the completion or occurrence of the prerequisites set out in para. 1 (d) (i) of the decision.

In my opinion from the grammatical interpretation of *Exh.* 1 and by attributing to it, the natural meaning of the words, the aforesaid decision, includes all conscripts who had secured admission before the date of the decision, that is to say all conscripts satisfying the prerequisites required for the discharge up to the date of the decision in question.

By its decision the Council of Ministers exercises the powers granted to it by s. 9 (1). Discharges all those national guardsmen serving, who have completed a period of military service of over 24 months and who can satisfy the Minister that they had secured such admission before the taking of the decision of the 29.8.74. By para. 2 of the decision the fixing of the time of discharge is left to the Minister according to the commencement of the academic year in each case. By the aforesaid decision its contents, that is the discharge is exhausted upon the ascertainment of certain situations.

As it is stated in the Law of Administrative Acts by M. D. Stasinopoulos (1951) p. 136—

" The basis of the distinction between ascertainments and acts proper, is the observation, that the contents of some administrative acts is exhausted upon the ascertainment of a certain situation which by the mere authentic ascertainment of its existence, entails legal consequences without the administrative act ascertaining it creating any new relation or situation emanating directly from the will of the administration. On the contrary by the other acts the will of the organ creates directly legal relations or situations, rights

and obligations or proceeds with their modification or repeal".

The aforesaid administrative act (a) recognizes the right to discharge which is given by the competent, according to the law, administrative organ *i.e.* the Council of Ministers, (b) cedes part of its competences to the Minister of Interior for the ascertainment of a situation i.e. the prerequisites of the right to discharge and (c) it becomes a creative act to the extent that it confers, by this act, the rights emanating from the ascertainment or the obligations corresponding to the principles relating to discharge.

In view of the aforesaid conclusion, the second issue should be examined, that is the issue of discrimination and unequal treatment.

It was stated and there is no doubt about it, that admissions in the Greek Universities and Higher Schools commence as from the 1st of September of each year. They therefore allege that the fixing of the 29th of August as the last date for admission recognized as a prerequisite for discharge is arbitrary, as it excludes the right of discharge to all those intending to attend Greek Universities for the academic year 1974–1975. There is, *inter alia*, discrimination with regard to countries as well.

The first instance judge relying upon the case–law of this Court came to the conclusion that the so interpreted decision did not constitute unequal treatment or discrimination and I agree with this conclusion. As it has been accepted by case–law, in a series of decisions commencing with the case of *Mikrommatis* and *Republic*, 2 R.S.C.C. 125 up to the recent decision of the Full Bench in *Demetrakis Meletiou & Another* v. *The District Labour Officer* (1975) 2 C.L.R. 21 the term "equal before the law" does not convey the notion of exact arithmetical equality but it safeguards only against arbitrary discriminations and does not exclude reasonable distinctions which have to be made in view of the intrinsic nature of things.

Furthermore it has been accepted that the equality safeguarded by the Constitution requires equality in law that is to say it prohibits not only inequality in applying the laws, but also prohibits substantial inequality in the course of laying down the law. Deviations from the general rule are not excluded according to this view too, but these on the one hand cannot

exceed certain extreme limits in each particular case, and on the other hand they are only permitted only so long as they can be justified from the objective point of view on the basis of adequate grounds". (See Sgouritsa Constitutional Law 2nd Volume 2nd Part, (1966) page 185, adopted in the case of *Meletiou supra*).

In the present case it should be noted that the term "forced or compulsory labour" referred to in Article 10.2 of the Constitution, does not include according to para. 3 (b) of the same Article any service of military character and therefore restrictions or exceptions to the fundamental right of protection from being required to perform forced or compulsory labour safeguarded by Article 10.2 are permitted.

This provision of the Constitution corresponds to Article 4 of the European Convention on Human Rights, countersigned by the Republic and ratified by the homonymous Law No. 39 of 1962. Rightly so military service is not included in the meaning of the term "compulsory labour" as such service provides an opportunity for an honourary service to the country and was generally considered throughout the ages as indispensable. It is apparent that the military service especially during war time is inseparably connected with the existence of the state. Therefore the discretionary power of the administration on these matters is very wide, its legality being of course subject to judicial control as a Public Law relation. The fixing of time limit for the purpose of distinguishing between the conscripts who would enjoy a certain advantage or not, is under the circumstances due to its impersonal character and the wide extent of the class that it includes, reasonable and does not discriminate, when the reasonableness of this classification is examined in relation to the military needs and the personal elements existing at the time of the taking of the relevant decision.

It could be said that it was reasonable to discharge those conscripts who, with regard to the Greek Universities, may had possibly already missed one academic year and not discharge the rest. If by this decision due to the possibility of admission in other schools or Universities before the 29th August they may have enjoyed the said benefit, this by itself does not render unreasonable and arbitrary the fixing of the abovementioned date. On the contrary they are placed on the same footing with those who had already missed one academic year. Under the circumstances the fixing of this time limit does not exceed

the extreme limits as there exist sufficient reasons justifying this from an objective point of view.

For the above reasons the present appeal is dismissed with no order as to costs.

5 STAVRINIDES, J.: I agree that the *sub judice* decision was based on a wrong interpretation of the word "discharges" which is found at the beginning of the ministerial decision. This word should be interpreted as referring not only to the present but also to the future. Such use of the present tense 10 is not unknown to the Greek legal language, many relevant instances of which could be mentioned.

I agree that the *sub judice* decision should be annulled for the above reason and I consider it unnecessary to deal with the question of discrimination.

15 L. LOIZOU, J.: I agree that the appeal should be allowed. The facts have already been stated and I do not propose to go into them in any detail. I consider it sufficient for the purposes of this judgment to say that it is common ground that:–

(i) All the appellants had at all material times, served 20 in the National Guard for periods exceeding 24 months.

(ii) The admission of new students in the Greek Universities does not start before the 1st September of each academic year.

(iii) The first three appellants were admitted in the Univer- 25 sity of Athens at various dates between the 12th and the 23rd of September, 1974, and the fourth on the 10th October, 1974.

(iv) The academic year in the Greek Universities, as a rule, never commences before the 1st October in each 30 year; but for the academic year 1974–1975, the University of Athens opened for regular lectures at the beginning of January, 1975.

The first and most vital issue that falls for consideration in the present appeal is whether the four appellants are covered, 35 in the light of the above, by decision No. 13453 of the Council of Ministers, dated the 29th August, (*exh.* 1), and therefore I consider it useful to cite the relevant part of this decision:–

"EXTRACT FROM THE MINUTES OF THE MEETING OF THE COUNCIL OF MINISTERS, DATED 29.8.1974.

Discharge of Reservists and other conscripts Decision No. 13453 (*Submission No.* 470/74). 5

1. The Council of Ministers in exercise of its powers granted by s. 9 (1) of the National Guard Laws, 1964 to 1968, by this decision hereby discharges —

(a) All reservists of age groups 1958 to 1964 both inclusive.

(b) All reservists who are attending Universities or Schools of Higher Education abroad. 10

(c) All reservists who are proved to reside permanently abroad.

(d) Those conscripts who are on regular service and have completed a period of service of more than 24 months, who satisfy the Minister that:- 15

(i) They have secured admission in Universities or Schools of Higher Education abroad;

(ii) They have, following selection of a Committee approved by the Council of Ministers and for a period not shorter than one academic year, been granted scholarships for University or post graduate studies at Universities or Schools of Higher Education or Institutions equivalent to Universities abroad so that they may be able to attend them during the next academic year 1974–75. 20 25

2. The time of discharge of those under (b) and (d) (i) and (ii) above will be determined by the Minister according to the time of commencement of the ademic year in each case". 30

It will be observed that in the text of the decision there is no time restriction in so far as the time of admission of a student at a University which will entitle him to come within its purview; and I am quite clearly of the view that the 29th August 1974, which is the date on which the decision was taken, cannot be considered as introducing such a time restriction. I am of the 35

view that if such a restriction was intended it should not have been introduced by "hereby discharges" but by "by this decision it hereby decides to discharge those who on the 29th August, 1974, satisfy the following requirements". I am further of the view that the verb discharge, as this is used in the indicative mood of the present tense, as it happens with Laws and regulations, indicates continuity and means a provision in continuous force, unless otherwise provided.

For the above reason I am of the opinion that the four applicants satisfy the requirements and are covered by the provisions of the abovementioned decision of the Council of Ministers and that, therefore, the present appeal should be allowed.

Lastly, I think that I ought to mention that, in the light of the circumstances of the present case, the contrary view would, in my opinion, have raised serious doubts with regard to the validity of the *sub judice* decision on the ground of discrimination.

TRIANTAFYLLIDES, P.: The facts of the present case, as well as the relevant legislative provisions, have been referred to at length in the judgments already delivered and so their repetition by me is unnecessary.

I agree with the view expressed by Mr. Justice A. Loizou that sub-paragraph d (i) of paragraph 1 of the decision of the Council of Ministers, No. 13453, dated 29th August, 1974, which states that the Council of Ministers "......... discharges ... (d) the conscripts who are in regular service and have completed a period of service of more than twenty-four months and who satisfy the Minister"—(the Minister of Interior)—"that: (i) they have secured admission in Universities or Institutions of Higher Education abroad", refers to those who had already secured such admission up to the date on which the said decision was reached; and for this reason I cannot agree with the submission of counsel for the appellants that the sub-paragraph in question is applicable to the cases of the appellants, who have secured admission after the aforesaid date.

Rightly, therefore, the respondents refused to discharge the appellants on the strength of the said sub-paragraph.

Paragraph 2 of the aforementioned decision of the Council of Ministers provides that the time of discharge "of those coming within .... (d) (i) .... above, will be determined by the

Minister according to the time of commencement of the academic year in each case"; the academic year, being, of course, only that of 1974–1975, to which relates the discharge on account of studies, which was decreed by the Council of Ministers.

Until the commencement of the academic year 1974–1975 it was possible for conscripts, who had not secured admission in Universities or Institutions of Higher Education abroad up to the 29th August, 1974, to secure such admission, as, indeed, the appellants have done; they, however, could not be discharged from the National Guard in order to go abroad for studies, as it was done in the cases of those who had already secured admission till the 29th August, 1974.

Thus, due to the coincidence that the decision of the Council of Ministers was reached on a certain date, those conscripts, who had completed a period of service of more than twenty-four months and who intended to go for studies in Universities or Institutions of Higher Education abroad, in the academic year 1974–1975, were treated unequally, depending on whether they had or had not secured admission till the above date, namely the 29th August, 1974.

Paragraph (1) of Article 28 of our Constitution ordains that:

"All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby" (cp. Art. 4 of the Constitution of Greece of 1975, as well as Art. 3 of the Constitution of Greece of 1952).

The administrative authorities are bound to abstain from unequal application of rules of law and because of this duty there comes into existence a relevant limitation of the exercise of discretionary powers vested in such authorities by law, irrespective of whether such exercise results in a regulatory decision of a general character or in a decision concerning a specific case (see Svolos–Vlahos, The Constitution of Greece, 1954, v. A, pp. 185, 186); it is, indeed, quite clear that the rule of law created by a regulatory act of a general character is subject to the constitutional requirement for equality in the same way as any statute (see Stassinopoullos, The Law of Administrative Acts, 1951, p. 351).

The principle of equality does not exclude, of course, the creation of distinctions, if such a course is justified by adequate reasons. In the present case, however, no adequate reason has

been put forward which could justify the division of conscripts, who had completed more than twenty four months' service and who intended to go abroad for studies, in the academic year 1974–1975, into two categories: That of the privileged who were to be discharged because they happened to have secured admission till the 29th August, 1974, when the relevant decision of the Council of Ministers was taken, and that of the adversely affected who were not to be discharged because they had not secured admission till such date. The arbitrariness of such distinction is demonstrated when one takes into account that those who were to enjoy the benefit of the privileged treatment were not to be released before the commencement of the academic year 1974–1975, in each particular instance, and that until such commencement it was possible for those adversely affected to secure admission for studies in the same academic year; and for some of them, such as those who intended to study in Greece, it was impossible to have secured admission before the 1st September, 1974.

In view of the above I have considered the possibility of interpreting sub-paragraph d (i) of paragraph 1 of the relevant decision of the Council of Ministers in such a way as to avoid a violation of the constitutional provision safeguarding the principle of equality; because, a text capable of multiple interpretations must be interpreted, finally, in a manner by which there is avoided any conflict with the Constitution (see Tsatsos, The Problem of Interpretation in Constitutional Law, 1970, p. 26). I have come, however, to the conclusion that an interpretation of the contents of the said sub-paragraph d (i), permitting the discharge of conscripts who had not already secured admission in Universities or Institutions of Higher Education abroad till the 29th August, 1974, would constitute an interprepation by-passing the clear wording of sub-paragraph d (i) and such a course is not within the limits of the powers of construction vested in a Court (see Tsatsos, *supra*, p. 27).

The decision in question of the Council of Ministers is a regulatory "order", in the sense of Article 54 (g) of the Constitution, and it was made by virtue of the relevant provisions in the National Guard legislation. In view of the fact that sub-paragraph d (i) of paragraph 1 of such decision cannot be construed in a manner harmonizing it with the principle of equality, it follows, on the basis of what has been already stated, that the matter of the discharge of the conscripts who wished to

study abroad has been regulated in a manner entailing unequal treatment for conscripts such as the appellants and, as a result, the *sub judice* refusal of the respondents to discharge from the National Guard the appellants, which has occurred due to the state of things created by the aforementioned "order" and notwithstanding their admission in the meantime for university studies in Greece, constitutes an administrative act violating the above-referred to Article 28.1 of the Constitution; and for this reason it should be declared to be *null* and *void* and of no effect whatsoever.

In the light of all the foregoing the present appeal should be allowed.

TRIANTAFYLLIDES, P.: In view of the contents of the judgments which have been delivered, the appellants' appeal is allowed, by majority, and therefore the *sub judice* administrative act is declared to be *null* and *void* and of no effect whatsoever. We are not prepared, however, to award costs against the respondents.

Appeal allowed. No order as to costs.