10η Δεκεμβρίου, 1980.

(ΜΑΛΑΧΤΟΣ, Δ.)

ΕΠΙ ΤΟΙΣ ΑΦΟΡΩΣΙ ΤΟ ΑΡΘΡΟΝ 146 ΤΟΥ ΣΥΝΤΑΓΜΑΤΟΣ

ΓΕΩΡΓΙΟΣ ΠΡΟΔΡΟΜΟΥ,

Αἰτητὴς,

κατὰ

ΤΗΣ ΔΗΜΟΚΡΑΤΙΑΣ ΤΗΣ ΚΥΠΡΟΥ ΜΕΣΩ ΥΠΟΥΡΓΕΙΟΥ ΠΑΙΔΕΙΑΣ, ΚΑΙ Η ΥΠΟΥΡΓΟΥ ΠΑΙΔΕΙΑΣ,

Καθ' ὧν ἡ αἴτησις.

(*Υπόθεσις* 'Υπ' ἀρ. 395/80).

Προσωρινὸν διάταγμα—Γενικαὶ ἀρχαὶ—Προσφυγὴ κατὰ μεταθέσεως Διευθυντοῦ Σχολῆς Μέσης Ἐκπαιδεύσεως—Ἔκδηλος παρανομία—Προσωρινὸν διάταγμα ἀναστέλλον μετάθεσιν μέχρι τελικῆς ἐκδικάσεως τῆς προσφυγῆς.

Μετὰ τὴν καταχώρησιν προσφυγῆς ὑπὸ τοῦ αἰτητοῦ, κατὰ τῆς ἀποφάσεως τῶν καθ' ὧν ἡ αἴτησις νὰ τὸν μεταθέσουν ἐκ τῆς θέσεως Διευθυντοῦ τοῦ Παγκυπρίου Γυμνασίου εἰς τὴν θέσιν Διευθυντοῦ εἰς τὸ Β' Γυμνάσιον Ἀκροπόλεως Λευκωσίας, οὗτος κατέθεσεν, ἐπίσης, αἴτησιν διὰ παρεμπίπτον καὶ/ἢ προσωρινὸν διάταγμα διατάττον τὴν ἀναστολὴν τῆς τοιαύτης μεταθέσεως μέχρι τελικῆς ἐκδικάσεως τῆς προσφυγῆς του.

Κατὰ τὴν διάρκειαν τῆς ἀκροάσεως τῆς αἰτήσεως διὰ προσωρινὸν διάταγμα ἡ δικηγόρος τῆς Δημοκρατίας παρεδέχθη ὅτι "ἀπὸ τὶς ἔρευνες τὶς ὁποῖες ἔκανε στοὺς σχετικοὺς φακέλλους" πρόκειται περὶ ἐκδήλου παρανομίας.

Τὸ Δικαστήριον ἔκρινεν ὅτι:

Εἶναι φανερὸν ὅτι ὑπάρχει ἔκδηλος παρανομία εἰς τὴν παροῦσαν ὑπόθεσιν καὶ συμφώνως τῶν ἀρχῶν αἱ ὁποῖαι διέπουν τὴν ἔκδοσιν προσωρινῶν διαταγμάτων πρέπει νὰ δοθῇ τὸ ἐξαιτούμενον διάταγμα. Ὡς ἐκ τούτου δίδεται προσωρινὸν διάταγμα διατάττον τὴν ἀναστολὴν τῆς ὡς ἄνω μεταθέσεως τοῦ αἰτητοῦ μέχρι τελικῆς ἐκδικάσεως τῆς προσφυγῆς.

Ἐκδίδεται προσωρινὸν διάταγμα.

Editor's note: An English translation of this judgment appears at pp. 42–45 *post*.

Ὑποθέσεις παρατεθεῖσαι:

Ἀσπρῆ ἐναντίον τῆς Δημοκρατίας, 4 R.S.C.C. 57.

Γεωργιάδης (No. 1) ἐναντίον τῆς Δημοκρατίας (1965) 3 C.L.R. 392.

Προκοπίου καὶ ἄλλοι ἐναντίον τῆς Δημοκρατίας (1979) 3 C.L.R. 686.

Μιλτιάδους καὶ Ἄλλοι ἐναντίον τῆς Δημοκρατίας (1972) 3 C.L.R. 342.

Αἴτησις διὰ παρεμπίπτον καὶ/ἢ προσωρινὸν διάταγμα.

Αἴτησις διὰ παρεμπίπτον καὶ/ἢ προσωρινὸν διάταγμα διατᾶττον τὴν ἀναστολὴν τῆς μεταθέσεως τοῦ αἰτητοῦ ἀπὸ τὴν θέσιν Διευθυντοῦ τοῦ Παγκυπρίου Γυμνασίου εἰς τὸ Β' Γυμνάσιον Ἀκροπόλεως Λευκωσίας, μέχρι τελικῆς ἐκδικάσεως τῆς προσφυγῆς τοῦ αἰτητοῦ ἐναντίον τῆς ὡς ἄνω μεταθέσεώς του.

Α. Σ. Ἀγγελίδης, διὰ τὸν αἰτητήν.

Γ. Κωνσταντίνου (Δνὶς), διὰ τοὺς καθ' οὓς ἡ αἴτησις.

Cur. adv. vult.

ΜΑΛΑΧΤΟΣ Δ. Λόγω τῆς ἐπειγούσης φύσεως τῆς παρούσης αἰτήσεως θὰ προχωρήσω νὰ δώσω ἀπόφασιν ἀμέσως.

Εἰς τὴν παροῦσαν ὑπόθεσιν ὁ αἰτητὴς ἐξαιτεῖται παρὰ τοῦ Δικαστηρίου παρεμπίπτον καὶ/ἢ προσωρινὸν διάταγμα διατᾶττον τὴν ἀναστολὴν τῆς μεταθέσεώς του ἀπὸ τὴν θέσιν Διευθυντοῦ τοῦ Παγκυπρίου Γυμνασίου εἰς τὴν θέσιν Διευθυντοῦ εἰς τὸ Β' Γυμνάσιον Ἀκροπόλεως Λευκωσίας, μέχρι τελικῆς ἐκδικάσεως τῆς αἰτήσεώς του.

Ἡ αἴτησίς του εἶναι ἐναντίον ἀποφάσεως τῶν καθ' ὧν ἡ αἴτησις, ἡ ὁποία περιέχεται εἰς ἐπιστολὴν ἡμερομηνίας 16 Αὐγούστου 1980 (τεκμήριον 1), ὅπως ὁ αἰτητὴς μετατεθῇ ἀπὸ τὴν 1ην Σεπτεμβρίου 1980.

Τὰ νομικὰ σημεῖα ἐπὶ τῶν ὁποίων βασίζεται ἡ αἴτησις εἶναι:

Α. Ὅτι ὁ καθ' οὗ ἡ αἴτησις κατὰ τὴν ἔκδοσιν τῆς προσβαλλομένης ἀποφάσεως ἐνήργησε καθ' ὑπέρβασιν καὶ κατάχρησιν ἐξουσίας καὶ κατ' ἀντίθεσιν πρὸς τὸ δημόσιον συμφέρον καὶ τὸ συμφέρον τῆς ἐκπαιδεύσεως χωρὶς νὰ γίνῃ ἡ δέουσα ἔρευνα.

Β. Ἡ καθ' ἧς ἡ αἴτησις, ἀρχὴ, ἐνήργησε αὐθαιρέτως καὶ κατὰ

παράβασιν τοῦ Νόμου καὶ/ἢ Περὶ Ἐκπαιδευτικῶν Λειτουργῶν κανονισμοὶ τοῦ 1972 καὶ δὴ τῶν κανονισμῶν 13–21.

Γ. Ὅτι ἡ προσβαλλομένη ἀπόφασις ἀποτελεῖ τιμωριτικὴ ἐνέργεια καὶ/ἢ συγκεκαλυμμένη πειθαρχικὴ δίωξη κατὰ τοῦ αἰτητοῦ, ἢ προσβλέπει εἰς ἀλλότριον σκοπὸν καὶ ἐλήφθη κατὰ παράβασιν τῆς ἀρχῆς τῆς ἰσότητος καὶ τῶν κανόνων τῆς φυσικῆς δικαιοσύνης.

Δ. Ὅτι ἡ προσβαλλομένη πρᾶξις στερεῖται αἰτιολογίας.

Ἡ αἴτησις διὰ τὴν ἔκδοσιν τοῦ διατάγματος στηρίζεται ἐπὶ τῶν κανονισμῶν 13 καὶ 19 τοῦ Ἀνωτάτου Συνταγματικοῦ Δικαστηρίου, 1962. Τὸ δικαστήριον διὰ νὰ ἐκδώσῃ διάταγμα τοιαύτης φύσεως ἐξασκεῖ τὴν διακριτικὴν του ἐξουσίαν ἐπὶ τῇ βάσει τῶν εἰδικῶν γεγονότων τῆς ἑκάστοτε ὑποθέσεως καὶ ὑπὸ τὸ φῶς τῶν ἀρχῶν αἱ ὁποῖαι διέπουν τὸ Διοικητικὸν Δικαστήριον ὅταν ἐκδικάζῃ ὑποθέσεις τῆς παρούσης φύσεως. Αἱ τοιαῦται ἀρχαὶ ἔχουν εἰπωθῆ καὶ ἐφαρμοσθῆ μεταξὺ ἄλλων, ἀρχίζοντας ἀπὸ τὴν ὑπόθεσιν Ἀσπρῆ ν. Τῆς Δημοκρατίας, 4 R.S.C.C., 57, Γεωργιάδη No. 1 ν. Τῆς Δημοκρατίας (1965) 3 Α.Α.Δ. 392 καὶ νεωτέρων ἀποφάσεων ὅπως εἶναι ἡ ἀπόφασις στὴν ὑπόθεσιν Γεδεὼν Προκοπίου καὶ ἄλλων ν. Τῆς Δημοκρατίας (1979) 3 Α.Α.Δ. σ. 686 εἰς τὴν ὁποίαν ἀναφέρεται ὅλη ἡ σειρὰ τῶν ἀποφάσεων ἀναφορικὰ μὲ αἰτήσεις ἐπὶ τοῦ κανονισμοῦ 13 τῶν Κανονισμῶν τοῦ Ἀνωτάτου Συνταγματικοῦ Δικαστηρίου, 1962.

Εἰς τὴν ὑπόθεσιν Μιλτιάδους καὶ ἄλλοι ν. Τῆς Δημοκρατίας (1972) 3 Α.Α.Δ. 342 στὴν σ. 352 ἀναφέρονται τὰ ἑξῆς:

> "It is clear from the above that an applicant in order to succeed in an application for a provisional order under rule 13 of the Supreme Constitutional Court Rules, 1962, must show to the Court that his application is likely to prevail on the merits and that the non making of the order will cause him irreparable damage. It goes without saying that flagrant illegality of an administrative act militates strongly to the making of a provisional order even though irreparable damage has not been proved. As it appears from Louis L. Jaffe on 'Judicial Control of Administrative Actions' the above principles are accepted in American Jurisprudence more clearly. In Chapter 18 under the heading of 'Temporary Judicial Stays of Administrative Action Pending Judicial Review' of this book, at page 689, it is stated that:

'Despite the silence or variant wording of applicable statutes permitting stays 'upon good cause shown' or upon a 'finding' of irreparable 'damage', the power remains a discretionary and equitable one to be exercised according to traditional standards. The District of Columbia Circuit, with an extensive experience in motions for stays, has attempted to cast them into a formula in *Virginia Petroleum Jobbers Assn.* v. *FPC* (259 F. 2d. 921 (D.C. Cir. 1958)), which has since been widely referred to in the lower federal Courts. The applicant must show 1) that he is very likely to prevail on the merits; 2) that if he should prevail on the merits he will suffer irreparable injury if the stay is not granted; 3) that the other parties will not suffer harm; and 4) that the public interest will not be harmed' ".

Εἰς τὴν παροῦσαν ὑπόθεσιν ἡ εὐπαίδευτος δικηγόρος τῆς Δημοκρατίας παρεδέχθη ὅτι ἀπὸ τὶς ἔρευνες τὶς ὁποῖες ἔκανε στοὺς σχετικοὺς φακέλλους ὅτι πρόκειται περὶ ἐκδήλου παρανομίας καὶ ἔδωσε ὅλες τὶς σχετικὲς λεπτομέρειες.

Ἀπὸ τὰ γεγονότα τὰ ὁποῖα ἐτέθησαν ἐνώπιόν μου εἶναι φανερὸν ὅτι ὑπάρχει ἔκδηλος παρανομία εἰς τὴν παροῦσαν ὑπόθεσιν καὶ συμφώνως τῶν ἀρχῶν αἱ ὁποῖαι ἐτέθησαν ἀνωτέρω πρέπει νὰ δοθῆ τὸ ἐξαιτούμενον διάταγμα. Ὡς ἐκ τούτου δίδω προσωρινὸν διάταγμα διατάττον τὴν ἀναστολὴν τῆς μεταθέσεως τοῦ αἰτητοῦ ἀπὸ τὴν θέσιν τοῦ Διευθυντοῦ τοῦ Παγκυπρίου Γυμνασίου Λευκωσίας, εἰς τὴν θέσιν τοῦ Διευθυντοῦ εἰς τὸ Β' Γυμνάσιον Ἀκροπόλεως Λευκωσίας μέχρι τελικῆς ἐκδικάσεως τῆς προσφυγῆς.

Ἀναφορικὰ μὲ τὰ ἔξοδα δίδω διάταγμα ὅπως οἱ καθ' ὧν ἡ αἴτησις πληρώσουν εἰς τὸν αἰτητὴν £20.–ἔναντι τῶν ἐξόδων του.

Ὅσον ἀφορᾶ τὴν οὐσίαν τῆς ὑποθέσεως λόγω τῆς δηλώσεως τοῦ εὐπαιδεύτου δικηγόρου τοῦ αἰτητοῦ καὶ λόγω τοῦ ὅτι, ὅπως φαίνεται ἀπὸ τὸν φάκελλον τῆς ὑποθέσεως, δὲν ἔχει ἀκόμη καταχωρηθῆ ἔνστασις, ἡ ὑπόθεσις ἀναβάλλεται ἐπ' ἀόριστον καὶ δίδονται ὁδηγίαι εἰς τὸν Πρωτοκολλητὴν νὰ ὁρισθῆ ἡ ὑπόθεσις δι' ὁδηγίας τῇ αἰτήσει οἱουδήποτε τῶν διαδίκων.

Τελειώνοντας θεωρῶ καθῆκον μου νὰ ἀναφερθῶ εἰς τὸν ἀκριβοδίκαιον τρόπον μὲ τὸν ὁποῖον ἡ εὐπαίδευτος δικηγόρος τῆς καθ'

ἧς ἡ αἴτησις ἀρχῆς ἐχειρίσθη τὸ ὅλον θέμα καὶ ἐξέθεσε τὴν ὅλην ὑπόθεσιν ἐνώπιον τοῦ Δικαστηρίου τούτου.

"Ἐκδοσις προσωρινοῦ διατάγματος.

This is an English translation of the judgment in Greek appearing at pp. 38–41 *ante*.

Provisional Order—Principles applicable—Recourse against transfer of secondary education Headmaster—Flagrant illegality—Provisional order suspending transfer until the final determination of the recourse.

After filing a recourse against the validity of the decision of the respondent to transfer him from the post of Headmaster of the Pancyprian Gymnasium to the post of Headmaster of the Acropolis B' Gymnasium, the applicant filed, also, an application for a provisional order suspending his transfer until the final determination of his recourse.

In the course of the hearing of the application for a provisional order Counsel for the respondent stated that from a search of the relevant files which she had made this was a case of a flagrant illegality.

On the application for a provisional order:

Held, that it is apparent that there exists flagrant illegality in the instant case and according to the principles governing the making of a provisional order the order applied for must be granted; and accordingly the provisional order applied for will be made ordering the suspension of the transfer of the applicant until the final determination of the recourse.

Application granted.

Cases referred to:

Aspri v. *The Republic*, 4 R.S.C.C. 57;

Georghiades (*No.* 1) v. *The Republic* (1965) 3 C.L.R. 392;

Procopiou and Others v. *The Republic* (1979) 3 C.L.R. 686;

Miltiadous and Others v. *The Republic* (1972) 3 C.L.R. 342 at p. 352.

Application for an interim and/or provisional order.

Application for an interim and/or provisional order ordering the suspension of applicant's transfer from the post of Headmaster of the Pancyprian Gymnasium to the post of Head-

master of the B' Acropolis Gymnasium until the final determination of his recourse against such transfer.

A.S. Angelides, for the applicant.

G. Constantinou (*Miss*), for the respondent.

Cur. adv. vult.

MALACHTOS J. gave the following judgment. Due to the urgent nature of this case I shall proceed to deliver my judgment forthwith.

In this case the applicant seeks an interim and/or provisional order ordering the suspension of his transfer from the post of Headmaster of the Pancyprian Gymnasium to the post of Headmaster of the B' Acropolis Gymnasium until the final determination of his recourse.

His recourse is directed against the decision of the respondents, contained in a letter dated 16th August, 1980, (*exhibit* 1), to transfer the applicant with effect from the 1st September, 1980.

The grounds of law relied upon in the recourse are:

A. That in taking the *sub judice* decision the respondent acted in excess and abuse of power and contrary to the public interest and the interests of education without making a due inquiry.

B. That the respondent Authority acted arbitrarily and contrary to Law and/or the Educational Officers Regulations, 1972 and particularly regulations 13-21.

C. That the *sub judice* decision constitutes an act of punishment and/or a concealed disciplinary prosecution against the applicant, and/or aims at an alien purpose and was taken in contravention of the principle of equality and the rules of natural justice.

D. That the *sub judice* decision lacks reasoning.

The application for the provisional order is based on rules 13 and 19 of the Supreme Constitutional Court Rules, 1962. In making such a provisional order the Court exercises its discretion on the basis of the particular facts of each case and in the light of the principles governing an Administrative Court when trying cases of this nature. These principles have been stated and applied, *inter alia*, beginning with the cases of *Aspri* v. *The Republic*, 4 R.S.C.C. 57, *Georghiades* (*No.* 1) v. *The Republic*

(1965) 3 C.L.R. 392 and recent decisions such as the case of *Yedeon Procopiou and Others* v. *The Republic* (1979) 3 C.L.R. 686 wherein reference is made to the whole series of decisions, relating to applications under rule 13 of the Supreme Constitutional Court Rules, 1962.

In the case of *Miltiadous and Others* v. *The Republic* (1972) 3 C.L.R. 342 at p. 352 the following are stated:

> "It is clear from tne above that an applicant in order to succeed in an application for a provisional order under rule 13 of the Supreme Constitutional Court Rules, 1962, must show to the Court that his application is likely to prevail on the merits and that the non making of the order will cause him irreparable damage. It goes without saying that flagrant illegality of an administrative act militates strongly to the making of a provisional order even though irreparable damage has not been proved. As it appears from Louis L. Jaffe on 'Judicial Control of Administrative Actions' the above principles are accepted in American Jurisprudence more clearly. In Chapter 18 under the heading of 'Temporary Judicial Stays of Administrative Action Pending Judicial Review' of this book, at page 689, it is stated that:
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> > 'Despite the silence or variant wording of applicable statutes permitting stays 'upon good cause shown' or upon a 'finding' of irreparable 'damage', the power remains a discretionary and equitable one to be exercised according to traditional standards. The District of Columbia Circuit, with an extensive experience in motions for stays, has attempted to cast them into a formula in *Virginia Petroleum Jobbers Assn.* v. *FPC* (259 F. 2d. 921 (D.C. Cir. 1958)), which has since been widely referred to in the lower federal Courts. The applicant must show 1) that he is very likely to prevail on the merits; 2) that if he should prevail on the merits he will suffer irreparable injury if the stay is not granted; 3) that the other parties will not suffer harm; and 4) that the public interest will not be harmed' ".

In the instant case the learned Counsel for the Republic conceded that from a search of the relevant files which she

had made this was a case of a flagrant illegality and gave all the relevant details.

From the facts which have been placed before me it is apparent that there exists flagrant illegality in the instant case and according to the principles which have been set out hereinabove the provisional order applied for will be made. I would, therefore, make a provisional order ordering the suspension of the transfer of the applicant from the post of Headmaster of the Pancyprian Gymnasium Nicosia to the post of Headmaster of the B' Gymnasium Acropolis Nicosia until the final determination of the recourse.

With regard to costs I hereby make an order for the payment by the respondents of £20.—to applicant towards his costs.

Regarding the substance of the case due to the statement of the learned Counsel of the applicant and due to the fact that, as appearing in the file of the case, the opposition has not yet been filed, the case is adjourned sine die with instructions to the Registrar to have the case fixed for Directions on the application of any one of the parties.

In concluding I deem it my duty to refer to the fair manner in which learned Counsel of the respondent Authority dealt with the matter and presented the whole case before this Court.

Application granted. Order for costs as above.