

1986 December 31

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

GEORGHIOS A. CHRYSOSTOMOU,

*Applicant,*

v.

- THE REPUBLIC OF CYPRUS, THROUGH
- 1. THE DEPARTMENT OF CUSTOMS,  
MINISTRY OF FINANCE,
- 2. THE DIRECTOR OF THE DEPARTMENT  
OF CUSTOMS,
- 3. THE SENIOR COLLECTOR OF CUSTOMS,
- 4. THE CUSTOMS DEPARTMENT OF LIMASSOL,

*Respondents.*

(Case No. 606/86).

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*Constitutional Law — Separation of State Powers — Function of deciding whether an offence has been committed or not is intrinsically of a judicial character — Forfeiture as an incident of breach of penal legislation is of its nature a judicial matter—Section 39(b) of the Customs and Excise Law 82/67—Offends against the separation between the Executive and the Judicial State Powers—It is, also, inconsistent with paras. 1 and 2 of Article 30 of the Constitution.* 5

*Constitutional Law — Disproportionate punishment — Constitution, Article 12.3—Mandatory sanction for breach of penal legislation—A “punishment” for the purpose of Article 12.3—Forfeiture of goods (section 39(b) of the Customs and Excise Law 82/67)—A “punishment” in the aforesaid sense—Whether the rules of natural justice incorporated in Article 12 are applicable to administrative proceedings—Question answer in the affirmative—The test* 10 15

*of applicability of Article 12.3 is not the character of the proceedings, but their implications—Said section 39(b) repugnant to or inconsistent with Article 12.3 of the Constitution.*

- 5 *Customs and Excise—Seizure of goods imported in contravention of the law with view to forfeiture—The Customs and Excise Law 82/67—Section 39(b)—Ambit of—Regulations 3, 6, 13 and 14 of the Second Schedule to the said law.*

10 This recourse is directed against the decision of the Customs Authorities to seize periodicals imported by the applicant with view to forfeiture on the ground that they were imported in contravention of the provisions of the Obscene Publications Law—Law 35/63 amended by Law 15 53/76. The said law is unquestionably a penal enactment prohibiting on pain of criminal sanctions the publication of obscene matters. The sub judice decision was taken in virtue of the powers vested in the aforesaid Authorities by section 39(b) of the Customs and Excise Law 82/67.

20 The applicant contended that s. 39(b) is unconstitutional on anyone of the following grounds, that is: (a) Breach of the doctrine of separation of the State Powers, (b) Breach of Article 12.3 of the Constitution in that forfeiture is mandatory irrespective of the circumstances attending the importation and (c) Violation of Article 12.4 25 of the Constitution.

· *Held, annulling the sub judice decision:* (1) Section 39, para. (b) in particular, empowers the Customs Authorities to seize goods that appear to them to have been imported in contravention of the Law with view to forfeiture. If 30 the owner does not dispute the seizure within the time limit provided by regulation 3 of the Second Schedule to Law 82/67 the goods stand forfeited. If the owner challenges the seizure, but fails to displace the presumption of legality of the action of the Customs Authorities raised by Regulations 13 and 14, the Civil Court has no authority 35 other than vindicating the forfeiture (Regulation 6). For-

feiture of goods or articles is, under any guise, a drastic measure, entailing loss of possession and ultimately loss of ownership.

(2) The Constitution of Cyprus is based on a strict separation of the three co-ordinate powers of the State, the Executive, Legislative and the Judicial. Punishment for breach of penal provisions of the law is, by its nature, a matter of judicial competence exclusively amenable to the jurisdiction of the Judicial branch of the State. Article 30.2 of the Constitution specifically entrusts to Courts of law competence to determine the validity of a criminal charge.

The answer to the question whether section 39(b) entails adjudication upon the validity of a charge is in the affirmative. The Customs Authorities are made the arbiters of whether a criminal offence has been committed in breach of the import Legislation. Though they are not required to decide directly the guilt or innocence of the importer, they do so indirectly by being empowered to decide whether the criminal law has been breached and to impose a punishment peculiarly amenable to the jurisdiction of a criminal Court. The function of deciding whether an offence has been committed is intrinsically of a Judicial character. Likewise forfeiture as an incident of breach of penal legislation is of its nature a Judicial matter.

It follows that s. 39(b) of Law 82/67 offends against the separation of the Executive and Judicial State Powers and is contrary to paras. 1 and 2 of Article 30 of the Constitution.

(3) The nature and attributes of punishment under Article 12.3 of the Constitution were discussed in *Raftis and Co v. Municipality of Paphos* (1982) 2 C.L.R. 1. A series of decisions of this Court and the Supreme Constitutional Court establish incontrovertibly that every mandatory sanction for breach of penal legislation is a punishment for the purpose of Article 12.3. Forfeiture is a sanction of a penal character (*Istambouli Bros. v. Director of Depart-*

*ment of Customs and Excise* (1986) 1 C.L.R. 465 not followed).

5 Article 12.3 lays down that no one should get by way of punishment for breach of the criminal law more than he deserves on account of his conduct. This is one of the fundamental rules of natural justice. The case law establishes that the rules of natural justice incorporated in Article 12 have application in administrative proceedings too. Article 12 applies to proceedings of whatever character so long as they affect or are likely to affect the fundamental human rights entrenched therein. The test of the applicability of Article 12.3 is not the character of the proceedings, but their implications. If its application was dependent on the label of the proceedings and not on their consequences, the Constitutional protection of the human rights safeguarded by Article 12 could be easily jeopardized by dejudicializing aspects of adjudication of alleged breaches of criminal law and sanctions associated therewith.

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20 It follows that section 39(b) of Law 82/67 is repugnant to and inconsistent with Article 12.3.

(4) In the light of the above there is no need to examine the question whether the aforesaid section is contrary to Article 12.4 of the Constitution.

25 *Sub judice decision annulled.*  
*No order as to costs.*

Cases referred to:

*Improvement Board of Eylenjia v. Constantinou* (1967) 1 C.L.R. 167;

30 *President of the Republic v. House of Representatives* (1985) 3 C.L.R. 1429;

*President of the Republic v. House of Representatives* (1985) 3 C.L.R. 2165;

35 *Diagoras Development v. National Bank* (1985) 1 C.L.R. 581;

- Pastellopoulos v. The Republic* (1985) 2 C.L.R. 165;
- Istambouli Bros. v. Director of Department of Customs and Excise* (1986) 1 C.L.R. 465;
- Zavos v. The Police* (1963) 1 C.L.R. 57;
- Gendarmerie v. Zavos*, 4 R.S.C.C. 63; 5
- Golden Sea-side Estate Co. v. Municipal Corporation of Famagusta* (1973) 2 C.L.R. 58;
- District Officer Nicosia v. HadjiYiannis*, 1 R.S.C.C. 79;
- District Officer Nicosia v. Palis*, 3 R.S.C.C. 27;
- Nicosia Police v. Ahmet*, 3 R.S.C.C. 50; 10
- District Officer v. Naim*, 2 R.S.C.C. 24;
- Costas Mourtouvanis and Sons Ltd. v. The Republic* (1966) 3 C.L.R. 108;
- Raftis and Co. v. Municipality of Paphos* (1982) 2 C.L.R. 1;
- R. v. Menocal* [1979] 2 All E.R. 510; 15
- Georghiades v. The Republic* (1969) 3 C.L.R. 396;
- Lambrou v. The Republic* (1972) 3 C.L.R. 379;
- Haros v. The Republic*, 4 R.S.C.C. 39;
- Morsis v. The Republic*, 4 R.S.C.C. 133;
- Petrou v. The Republic* (1980) 3 C.L.R. 203; 20
- Menelaou v. The Republic* (1980) 3 C.L.R. 467;
- Papacleovoulou v. The Republic* (1982) 3 C.L.R. 187;
- Christodoulou v. Disciplinary Board* (1983) 1 C.L.R. 999;
- Papaphotis v. The Republic* (1984) 3 C.L.R. 915;
- Payiatas v. The Republic* (1984) 3 C.L.R. 1239; 25
- Kikas and Others v. The Republic* (1984) 3 C.L.R. 852;

*Vakis v. The Republic* (1985) 3 C.L.R. 534;

*Philippides v. The Republic* (1985) 3 C.L.R. 2588.

**Recourse.**

5 Recourse against the decision of the respondents to seize periodicals imported by applicants with a view to forfeiture taking the view that the periodicals were imported in contravention of the provisions of the Obscene Publications Law, 1963 (Law No. 35 of 1963 as amended by Law 53/76).

10 *Chr. Clerides*, for the applicants.

*St. Theodoulou*, for the respondents.

*Cur. adv. vult.*

15 PIKIS J. read the following judgment. At issue is the constitutionality of section 39(b) of the Customs and Excise Law 82/67, a law codifying and extending the customs legislation. Determination of the question preliminary to inquiry into the merits of the sub judice decision is necessary for s. 39(b) was the source of the authority claimed for the seizure with a view to forfeiture of periodicals imported  
20 by the applicant. If the authority giving enactment is unconstitutional, every decision founded thereon is similarly invalid amounting to action taken outside the framework of the Constitution.

25 Section 39(b) belongs to a part of the law introduced by the title "Offences Relating to Importation", with the marginal note thereto explaining "Forfeiture of Goods Illegally Imported". Of course, the side note is not part of the law; its relevance lies in the light it throws on the ambit of the law where its language is unclear. Read as a whole s. 39  
30 aims to confer power on the Customs Authorities to forfeit goods imported in contravention of the law. The title and marginal note provide, it seems to me, a fair description of the ambit of s. 39, para. (b) in particular, namely, to empower the Customs Authorities to seize goods that appear to them to have been imported in contravention to the  
35 law with a view to forfeiture.

In exercise of the power vested in them by s. 39 (b), the respondents seized periodicals imported by the applicant with a view to forfeiture taking the view they were imported in contravention of the provisions of the Obscene Publications Law—Law 35/63 (Amended by Law 53/76). The publication of obscene matters is made an offence punishable with two years imprisonment or a fine of £300.- or both. By virtue of s. 2(3) (a), the importation or attempted importation of such material amounts to “publishing” rendering the importer liable to the sanctions of the law. The Obscene Publications Law is unquestionably a penal enactment prohibiting on pain of criminal sanctions the publication of obscene matters. In the event, the respondents decided the periodicals imported by the applicant were obscene, and as such their importation was prohibited by Law 35/63; in consequence their importation was illegal. And, exercising the powers conferred on them by s. 39(b), they seized the periodicals with a view to forfeiture.

Forfeiture of goods or articles is, under any guise, a drastic measure. It entails loss of possession and ultimately ownership of the goods unless the importer challenges the seizure within the time specified in Regulation 3 of the Second Schedule to the Law. And further, provided that the importer is eventually successful in establishing before a civil Court that the seizure was unjustified. The manner of challenge and the civil proceedings following thereafter (Customs prosecution) are the subject of detailed regulation by the Second Schedule to the Law. A statutory presumption of legality of the action of the Customs Authorities is raised by Regulations 13 and 14 putting the burden on the owner to establish the opposite. And in the event of failure to displace this burden, the goods stand condemned, the civil Court having no authority other than vindicating the forfeiture. Regulation 6 limits the discretion of the Court to judicially sanctioning the forfeiture.

On the other hand, if the owner does not dispute the seizure within the statutory period of one month prescribed by Regulation 3, the goods stand forfeited. Though counsel for the respondents doubted the interpretation of Law 35/63 adopted by the Customs Authorities and the seizure

in consequence thereof of the periodicals, he supported the power claimed by them under s. 39 (b) to seize the goods with a view to forfeiture in the event of prohibition of their importation. In his submission s. 39(b) is inoffensive to the doctrine of separation of powers and specific articles of the Constitution allegedly incompatible with its provisions. Notwithstanding the advice of counsel that Law 35/63 did not as such prohibit the importation of obscene publications, the respondents failed or refused to revoke their decision. Therefore, counsel felt constrained, as he informed the Court, to support their action. Hence need arises to examine the constitutionality of the powers vested in the Customs Authorities by s. 39(b) and assumed in this case as the basis of their action.

15 In the notice articulating the question of constitutionality(1), s. 39(b) is challenged as unconstitutional on three separate grounds: (a) breach of the separation of the powers of the State entrenched in the Constitution by assigning to the Administration functions belonging to the  
20 judicial power; (b) breach of Article 12.3 by making forfeiture mandatory irrespective of the circumstances attending the importation, and (c) violation of Article 12.4 giving constitutional effect to the presumption of innocence. In accordance with its provisions no one can be regarded  
25 guilty of an offence unless convicted by a Court of law claiming jurisdiction in the matter.

As often proclaimed (2) the Constitution of Cyprus is based on a strict separation of the three co-ordinate powers of the State, the Executive, Legislative and Judicial. The  
30 implications of the division of State power under the Constitution of Cyprus were recently explained in *Diagoras Development v. National Bank* (3). Save where provision is expressly made to the contrary in the Constitution, the competence of each power is confined to matters that in-  
35 here of their nature in the sphere of its jurisdiction. Punish-

(1) Improvement Board of Eylenja v Constantinou (1967) 1 CLR 167

(2) President of Republic v House of Representatives, (1985) 3 CLR 1429, 1466, President of Republic v House of Representatives (1985) 3 CLR. 2165, 2183

(3) (1985) 1 CLR 581



ment for breach of penal provisions of the law is, by its nature, a matter of judicial competence exclusively amenable to the jurisdiction of the judicial branch of the State. Article 30.2 specifically entrusts to Courts of Law competence to determine the validity of a criminal charge. 5  
Only a Court independent from the Executive, impartial, set up under and in accordance with constitutional provisions regulating the exercise of judicial power—Part X of the Constitution—can assume jurisdiction over the determination of a criminal charge or matter. In other words, only 10  
a Court incorporated in the hierarchy of the constitutional edifice of the judiciary can assume jurisdiction over and in relation to a criminal matter. This was made absolutely clear by the Full Bench in *Pastellopoulos v. Republic*(1). In the judgment of the majority given by Stylianides, J., it 15  
is explained “the term ‘independent’ refers to the independence of the Court from the Executive and from the parties. A Judge’s independence includes enjoyment of a certain statutory stability that does not necessarily imply that it should be stability for life but at least for a specific period. The Judge should not be subject to any authority in 20  
the performance of his duties as a Judge”.

The crucial question is whether s. 39(b) entails adjudication upon the validity of a charge. In my judgment the answer is in the affirmative. It empowers the Customs Authorities to determine whether a penal law has been transgressed with a view to imposing a criminal law sanction, that is, forfeiture. 25

True enough the Customs Authorities are not required directly to decide on the guilt or innocence of the importer as such, but they do so indirectly by being empowered to decide whether the criminal law has been breached, a prerequisite for conviction by a criminal Court, and conferment of authority to impose a punishment peculiarly amenable to the jurisdiction of a criminal Court. In essence 30  
they are made the arbiters of whether a criminal offence 35

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(1) (1985) 2 C.L.R. 165.

has been committed in breach of the import Legislation. That they are not vested with the full powers of a criminal Court does not change the judicial character of the duties assigned to them. The function of deciding whether  
5 an offence has been committed is intrinsically of a judicial character and as such exclusively in the competence of a Court of law. Likewise forfeiture as an incident of breach of a penal legislation, is of its nature a judicial matter solely amenable to the jurisdiction of a Court of law. The  
10 exercise of the authority vested in the Director necessarily entails the assumption and exercise of judicial power contrary to the constitutional separation between the Executive and Judicial branches of the State.

After judgment was reserved (10th December, 1986), the  
15 Court of Appeal decided in *Istambouli Bros. v. Director of Department of Customs & Excise*<sup>(1)</sup> that Regulation 6 of the Second Schedule to Law 82/67 limiting judicial discretion upon a successful customs prosecution to sanctioning the forfeiture is inoffensive to Article 12.3 of the  
20 Constitution on the ground that this article "... has no application in the present proceedings, the forfeiture complained of being an administrative process, it does not amount to a punishment and therefore cannot infringe the provisions of Article 12.3". Although the ratio of the case  
25 is confined, as I perceive it, to the constitutionality of Regulation 6, the reasoning underlying the decision no doubt supports the view that Article 12.3 has no application to forfeiture decided upon by administrative authority. On  
30 the other hand, the Court was not concerned with the review of the action under s. 39(b) of Law 82/67, nor was it required to determine its compatibility with the doctrine of separation of powers or the nature of the duties entrusted thereby to administrative authority.

35 Reading the judgment in the above case I am persuaded that numerous decisions of the Supreme Court definitive of the nature and character of forfeiture and punishment under Article 12.3 of the Constitution were not cited to

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(1) (1986) 1 C.L.R. 465.

the Court. As a result the Court erred, with respect, in its appreciation of the effect of Cyprus case-law respecting the compass of Article 12.3.

To begin the decision of the High Court in *Michael Demetriou Zavos v. The Police* (1) describing forfeiture of antiquities as incapable of being anything other than punishment in the sense of Article 12.3 was not cited to the Court. Reference had only been made to *Gendarmerie v. Zavos*(2) expressly disapproved by the High Court on its appreciation of the juridical implications of forfeiture.

A series of decisions of the Supreme Court and the Supreme Constitutional Court establish incontrovertibly that every mandatory sanction for breach of penal legislation is a punishment for the purpose of Article 12.3 of the Constitution. A demolition order under the Streets and Buildings Law (3), mandatory closure of a well illegally sunk(4), compulsory disqualification for breach of traffic legislation(5) and the mandatory order for the restoration of damage caused to government water works(6), have all been classified as sanctions amounting to punishment within Article 12.3, that prohibits, subject to well defined exceptions (that need not concern us here), the limitation of judicial discretion to fix the punishment for transgression of the criminal law

The nature and attributes of punishment under Article 12.3 were lengthily discussed by the Court of Appeal in *Raftis & Co. v. M'ty Paphos*(7). Stylianides J. described punishment as "... the sanction for transgressing the law..". A forfeiture order incidental to the transgression of import Legislation is, to my comprehension, manifestly a sanction for breach of the law. In a separate judgment in the same

(1) (1963) 1 C.L.R. 57

(2) 4 R.S.C.C. 63

(3) *Golden Sea-side Estate Co v Municipal Corporation of Famagusta* (1973) 2 C.L.R. 58, *District Officer Nicosia v Georghios Hadji Yiannis*, 1 R.S.C.C. 79

(4) *District Officer Nicosia v Michael Ktoris Pallas*, 3 R.S.C.C. 27

(5) *Nicosia Police v Djemal Ahmed*, 3 R.S.C.C. 50

(6) *District Officer v Yiacoou Naim*, 2 R.S.C.C. 24

(7) (1982) 2 C.L.R. 1

case I depicted punishment in the sense of Article 12.3 in the following terms: "... It must have the effect of depriving, in one or more respects, the fundamental rights of the accused, such as the right to freedom of movement and association and the rights to ownership and possession". A forfeiture order would equally come within the above definition of punishment under Article 12.3 entailing loss of possession and ultimately deprivation of ownership. Loris, J., agreed with both judgments signifying the absence of any fundamental difference between the approach of Stylianides, J. and myself concerning the ambit of Article 12.3. In *Costas Mourtouvanis & Sons Ltd. v. The Republic*(<sup>1</sup>) there are clear dicta that forfeiture is a punishment in the sense of Article 12.3 and as such subject to its provisions.

Support for the view that forfeiture is a sanction of a penal character, is also forthcoming from the decision of the House of Lords in *R. v. Menocal*(<sup>2</sup>).

It is a fact that in two cases, *Lefkos Georghiades v. The Republic*(<sup>3</sup>) and *Lambrou v. The Republic*(<sup>4</sup>), there are dicta of Triantafyllides, P., doubting the applicability of Article 12, or aspects of it, to administrative proceedings. These doubts were espoused and given effect to by the Court of Appeal in the case of *Istambouli* (supra). Here as well the attention of the Court of Appeal was not drawn to a strong body of case-law supporting, in fact establishing in my view, that Article 12 has application to administrative proceedings; at least to administrative proceedings having penal consequences.

In *Haros v. Republic*(<sup>5</sup>) the Supreme Constitutional Court decided the rules of natural justice incorporated in Article 12 have application in administrative proceedings too. The principle enshrined in Article 12.3 is a fundamental rule of natural justice; transposed in plainer language it lays down that no one should get by way of punishment for breach of the criminal law more than he deserves on ac-

(<sup>1</sup>) (1966) 3 C.L.R. 108.

(<sup>2</sup>) [1979] 2 All E.R. 510.

(<sup>3</sup>) (1969) 3 C.L.R. 396.

(<sup>4</sup>) (1972) 3 C.L.R. 379, 386.

(<sup>5</sup>) 4 R.S.C.C. 39.

count of his conduct. The principle adopted in *Haros* (supra) was reiterated in *Morsis v. Republic* (1). Guided by the same decision and the principle expressed therein, Malachos, J. held in *Petrou v. Republic*(2) that the rules of natural justice incorporated in Article 12 apply to administrative proceedings of disciplinary character. Hadjiannastassiou J. took similar view in *Menelaou v. Republic*(3). I tread along the same path in *Papacleovoulou v. Republic*(4) indicating that the decision in *Haros* (supra) is binding as a matter of precedent and in my view correct in principle too.

The conflict of judicial opinion was settled by the Full Bench unanimously declaring in *Christodoulou v. Disciplinary Board*(5). "I regard it as salutary that in Cyprus judicial trend favours the application of the provisions of Article 12.5 safeguarding the rights of a person charged with an offence to disciplinary as well as criminal proceedings".

Lastly, dicta of L. Loizou, J., in *Papaphotis v. Republic*(6) clearly suggest that Article 12.3 of the Constitution has application to administrative proceedings to the extent that they aim at the infliction of punishment.

It appears to me, in the light of the above analysis of our case-law, to be judicially settled that the application of Article 12 of the Constitution is not confined to criminal proceedings. It applies to proceedings of whatever character so long as they affect or are likely to affect the fundamental human rights entrenched therein; including the right to suffer no punishment disproportionate to the gravity of conduct leading to breach of penal legislation. The test of application of the provisions of Article 12.3 is not

(1) 4 R.S.C.C. 133.

(2) (1980) 3 C.L.R. 203.

(3) (1980) 3 C.L.R. 487.

(4) (1982) 3 C.L.R. 187.

(5) (1983) 1 C.L.R. 999, 1004.

(6) (1984) 3 C.L.R. 915.

the character of the proceedings but their implications. Fundamental human rights are by their nature indivisible and universal in their application. They apply on every occasion and in every situation affecting and likely to prejudice the rights safeguarded by Article 12. If the application of fundamental human rights, like those entrenched in Article 12.3 was dependent on the label of the proceedings and not on their consequences, the constitutional scheme for their protection could be easily jeopardized. This could be brought about by dejudicializing aspects of adjudication of alleged breaches of the criminal law and sanctions associated therewith, for example, by entrusting power to the appropriate authority under the Streets and Buildings Law to proceed with the demolition of premises built, in their view, contrary to law. Such action would not only neutralize human rights but would also destroy the foundation upon which their protection is constitutionally dependent, the separation of the powers of the State.

To avoid misunderstanding it must be clarified there is nothing offensive in the entrustment of power to the authority charged with the enforcement of a penal statute to seize goods and articles with a view to investigation of crime and prosecution of suspected offenders. Nor is there anything offensive in bestowing power on administrative authority to refuse the importation of goods prohibited by law. Any such action would, of course, be subject to review under Article 146.

In the light of the above, I am persuaded beyond any reasonable doubt that s. 39(b) of Law 82/67 is invidious to the constitutional scheme of separation of powers by assigning functions of judicial character to administrative authority and contrary to and inconsistent with paras. 1 and 2 of Article 30, in that it vests competence in a non judicial authority to determine liability for breach of penal legislation and impose criminal sanctions incidentally thereto. Also it violates and it is inconsistent with Article 12.3.

It is unnecessary to decide the compatibility of s. 39(b) with Article 12.4 of the Constitution because this ground

relates to an aspect of Law 82/67 with which we are not presently concerned, namely, the presumption of validity of the action of the Customs Authorities in the context of the judicial proceedings contemplated therein.

In the result the sub judge decision is declared null and void pursuant to the provisions of Article 146.4(b) of the Constitution. And I so order. There will be no order as to costs\*.

*Sub judge decision annulled.  
No order as to costs.*

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\* Note. Just before the hour appointed for delivery of judgment the Court was informed the sub judge decision has been revoked. Nevertheless, counsel for the applicant requested, as he was entitled to, that judgment on the issues raised be delivered seeking the judicial annulment of the decision as a safeguard for the exercise of the rights vested by Article 146.6 of the Constitution. Counsel for the Republic agreed applicant's request was justified. In answer to my question both counsel informed the Court they had no further arguments to raise. I proceeded with the delivery of the judgment prepared in the light of the principle adopted by the Full Bench in *Payiatis v. Republic* (1984) 3 C.L.R. 1239, 1245-1246, and in the cases of *Kikas & Others v. Republic* (1984) 3 C.L.R. 852; *Vakis v. Republic* (1985) 3 C.L.R. 534; and *Philippides v. Republic* (1985) 3 C.L.R. 2588.