

OSMAN MUSTAFA,

*Applicant,*

AND

C. I. LUCAS NEOPHITOU AND OTHERS,

*Respondents.*

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(Case No. 114/63).

*Disciplinary control—Nature of—Natural justice—Legal assistance in disciplinary proceedings—Right to—Not created by Article 12 of the Constitution—But derived from the rules of natural justice—Discretion to allow such legal assistance—To be reasonably exercised.*

*Disciplinary control—The Police (Discipline) Regulations—Charges thereunder against a police officer—The disciplinary control under the aforesaid Regulations is a manifestation of the exercise of executive power—And though the procedure to be followed has some judicial characteristics, it is not an instance of the exercise of judicial power—Therefore Article 12 of the Constitution does not create by itself a constitutional right in favour of a person charged under the aforesaid Regulations to have the assistance of an advocate in disciplinary proceedings under those Regulations, as it would have been the case under Article 12 in proceedings before a criminal Court—However, the rules of natural justice apply in proceedings of this nature with equal force as in other proceedings before criminal courts—They require that a person facing disciplinary charges which may entail such serious consequences as some of those enumerated in the Police (Discipline) Regulations should be afforded the opportunity to have legal assistance in defending himself—Unless the Presiding Officer, in exercising his discretion reasonably, is of opinion that the offence charged is of such trivial nature or that the request for legal assistance is not justified in the circumstances—Consequently paragraph 6 of regulation 14 of the Police (Discipline) Regulations does not preclude a Presiding Officer from allowing a police officer so charged to have the assistance of an advocate in disciplinary proceedings against him.*

**Observations of the Court as to :-**

(1) The framing of the title of a recourse : The title of the recourse must contain the names and description of the parties. These should be given in full and not in abbreviated form.

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(2) The framing of the motion for relief and the body of the application in general : Too many alternatives and other unnecessary matter as well as confusing and embarrassing expressions should be avoided.

Article 12 paragraph 5 of the Constitution provides :

“ Every person charged with an offence has the following *minimum rights* :

(a) . . . . (b) . . . . (c) to defend himself in person or through a lawyer of his own choosing or . . . . ”.

On the other hand by paragraph 6 of regulation 14 of the Police (Discipline) Regulations a police officer charged with a disciplinary offence may be assisted by a member of the Force.

Cases referred to :

*Nicolaos Haros and the Republic, through the Minister of the Interior, 4 R.S.C.C. 39, followed ;*

*Andreas Marcoullides and the Republic through the Public Service Commission, 3 R.S.C.C. 30, at p. 35, applied.*

*Nicos Kalisperas and the Republic through the Public Service Commission and another, 3 R.S.C.C. 146, at p. 151, applied.*

The facts sufficiently appear in the judgment of the Court. On an application by the applicant for a provisional order under rule 13 of the Supreme Constitutional Court Rules, the Court consisting of VASSILIADES, Acting Judge and Munir, Judge, delivered on the 11th July, 1963, the following decision :—

This is a recourse under Article 146 of the Constitution by a member of the Police Force of the Republic, Sergeant Osman Mustafa, against—

1. C.I. Lucas Neophitou of Athalassa,
2. Commander of Police, Athalassa,
3. The Republic of Cyprus through the Minister of Interior, Nicosia,

for an order of the Court “ directing that the order/or decision of the respondents to try the applicant before the so-called disciplinary body, without having been properly legally represented before such disciplinary body

is illegal, unconstitutional ultra vires, null and void, and/or the 'trial' itself is a nullity, and/or the decision reached at the preliminary trial to try without legal adviser and/or representation is a nullity and cannot be upheld in law".

Together with his recourse the applicant has also filed an application under rule 13 of the Supreme Constitutional Court Rules for a provisional order "restraining the respondents from proceeding the functioning or activities of the 'trial Court' due to sit on the 11th July, 1963 at Larnaca or putting into motion in any other way, thereby trying the applicant without being legally represented, and reducing him in ranks or in any other way affecting his position, prestige, or standing, or prospects of promotion or advancement in the Force". The applicant moreover applies for a provisional order "directing the respondents not to proceed to try the applicant before any other so-called disciplinary body, committee, tribunal, Court or any other body".

Before we deal with the application now before us *i.e.* the application for the provisional order, we wish to observe that the title of these proceedings contains various abbreviations which tend in our opinion to create confusion and are, we think, quite unnecessary.

The title of a recourse according to the rules of practice, must contain the names and description of the parties. These should be given in full and not in abbreviated form which is difficult for the ordinary person to understand. We take it that in this case the letters "P.S." before the name of the applicant, stand for "Police Sergeant", the letters "C.I." before the name of the first respondent stand for "Chief Inspector" and the letters "F.H.Q." after the names of the first and second respondent stand for "Force Headquarters".

We have not heard submissions or arguments on the point, and we, therefore, confine ourselves at this stage to the observation that for the purposes of this recourse we wonder whether the joining of all these respondents is really necessary.

We also wish to avoid at this stage dealing with the wording of the motion for relief itself, which, to say the least, contains, in our opinion, too many alternatives and perhaps a lot of other unnecessary matter.

Coming now to the application for a provisional order, which is the subject of the present proceedings before us, we must likewise observe that expressions such as "pro-

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ceeding the functioning or the activities of the trial Court ” and “ not to proceed to try the applicant before in any other so-called disciplinary body, committee, tribunal, Court or any other body ” are confusing and embarrassing. The applicant should know what is the precise remedy which he is seeking from this Court, and he must apply for that avoiding a line of alternatives and expressions such as “ so-called disciplinary body ”.

The facts which led to this recourse as they appear from the record and as they were presented to us by counsel are shortly these :

The applicant, who holds the rank of Police Sergeant in the Police Force of the Republic, was charged before a Presiding Officer under the Police (Discipline) Regulations on the 20th June, 1963, upon two disciplinary charges of which he had notice according to the Regulations.

Denying the charges against him, the applicant requested to be allowed to have legal assistance in defending himself in the proceedings against him. He made this request to the Presiding Officer under the provisions of Articles 12 and 30 of the Constitution.

The police officer presenting the case objected to the request on the ground that this was contrary to paragraph (6) of regulation 14 of the Police (Discipline) Regulations. The Presiding Officer then ruled as follows :—

“ I reject the application of the accused for the following reasons :—

- (a) Article 30 as read in conjunction with Article 12 of the Constitution do provide that an accused person should be afforded legal aid ;
- (b) Articles 30 and 12, however, deal when accused persons are charged before a Court of Law ;
- (c) As already stated this is not a Court of Law but an “ administrative or executive authority ” in dealing with disciplinary proceedings. Therefore Articles 30 and 12 should not be looked upon for this purpose ;
- (d) Paragraph 6 of Regl. 14 of the Police (Discipline) Regulations is clear that an accused may be assisted by a member of the Force, thus the natural course of justice is adhered to ”.

Upon this ruling the applicant in the present recourse stated to the Presiding Officer the following :

“ In view of your finding that I am not entitled to legal aid, I inform you that on this point I intend to make a recourse to the Supreme Constitutional Court.”

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Hence the present recourse.

In connection with the application for a provisional order, we heard this morning counsel for the applicant and the Attorney-General for the respondents.

The submissions on behalf of the applicant amount to the contention that Article 12 of the Constitution applies to the present proceedings in a way which gives the applicant a constitutional right to be represented by an advocate in the disciplinary proceedings before the Presiding Officer.

The Attorney-General, on the other hand, contended that Article 12 refers to proceedings for criminal or other offences punishable by law, before a court of competent jurisdiction and does not cover disciplinary proceedings of this nature.

The learned Attorney-General referred us to a number of authorities in support of his contention. The essence of his submission, putting it very briefly, is that Article 12 does not create a constitutional right as claimed, nor a corresponding obligation upon the Presiding Officer to accede to the applicant's request. On the other hand, however, the effect of paragraph (6) of regulation 14 of the Police (Discipline) Regulations does not, in the submission of the Attorney-General, preclude the Presiding Officer from allowing a person charged under the Police (Discipline) Regulations from employing the services of an advocate and having the benefit of legal assistance in proceedings under the said Regulations. It was his considered opinion, the Attorney-General told us, that in a proper case the Presiding Officer, exercising reasonably his discretion in the matter, should allow a person charged before him to have the benefit of legal assistance. Depending on the seriousness of the charge and other circumstances connected with such a case, the Presiding Officer should exercise a discretion in favour of a person who feels that the protection of his interests requires the assistance of a qualified lawyer.

In these circumstances three questions arise for decision :

- (1) whether Article 12 itself creates a constitutional right such as claimed by the applicant?
- (2) whether paragraph (6) of regulation 14 of the Police (Discipline) Regulations precludes the assistance of an advocate in proceedings of this nature? and
- (3) what is the proper order which should be made in this particular application?

As regards the first question, this Court has had to deal with a case of similar nature under the Police (Discipline) Regulations in November, 1962, in the case of *Nicolaos D. Haros and The Republic of Cyprus, through the Minister of the Interior* (4 R.S.C.C., p. 39). There, same as in this case, the applicant, a Police Sergeant, was charged under the same Regulations for bringing discredit to the reputation of the Police Force and for being insubordinate by words or demeanour; and having been found guilty on the first charge after the hearing before a Presiding Officer, was fined £10. The decision of the Presiding Officer was confirmed after being reviewed by the appropriate officer under the Regulations, when the applicant appealed under the provisions of regulation 19 (1) to the Commander of Police against the finding of guilt but not against the quantum of punishment. His appeal was dismissed but the Acting Commander, making use of his powers under the provisions of regulation 20 altered the punishment to one of reduction to the ranks without a hearing taking place before him, or the applicant being afforded an opportunity to be heard on, the intention to alter the original punishment. That decision of the Acting Commander was challenged by a recourse before this Court on a number of grounds into which we need not now enter. The order made by the Court was that the application could not succeed and was therefore dismissed, in so far as it referred to the decision of the Presiding Officer and the decision of the reviewing officer; but the decision of the Acting Commander on appeal was declared null and void and of no effect whatsoever mainly on the ground that it offended against the rules of natural justice in that the applicant was not heard by the Acting Commander before altering the sentence to the applicant's detriment.

It was decided in that case that disciplinary control, as provided under the relevant Police Regulations, is a manifestation of the exercise of executive power and though

the procedure to be followed has some judicial characteristics, it is not an instance of the exercise of judicial power and therefore a recourse under Article 146 against such a decision, lay.

Regarding the application of the principles of natural justice in such proceedings the Court had this to say :

“ Concerning the allegation that the provisions of regulation 20 are contrary to the rules of natural justice the Court is of the opinion that the said rules, which also under Article 12 are made applicable to offences in general, should be adhered to in all cases of disciplinary control in the domain of public law (vide *Andreas A. Marcoullides and The Republic (Public Service Commission)*, 3 R.S.C.C. p. 30 at p. 35, *Nicos Kalisperas and The Republic (Public Service Commission) and another*, 3 R.S.C.C. p. 146 at p. 151) and that, therefore, the provisions of regulation 20 should be applied subject to the aforesaid rules.”

It is, therefore, clear that this Court held that the rules and principles of natural justice, as known to our law, apply to all proceedings before bodies exercising disciplinary control over other persons.

The reference to Article 12 of the Constitution in the Judgment of the Court in that case was made to indicate that the Article contains the guiding principles which should be borne in mind by disciplinary bodies when dealing with cases before them in this Republic, in addition to the creation of constitutional rights to any person charged before a competent Court with an offence punishable by law.

In conclusion we are of the opinion that—

- (a) Article 12 itself as such does not create a constitutional right as claimed by the applicant in this case, in proceedings under the Police (Discipline) Regulations, as it would have been the case in proceedings before a criminal Court ;
- (b) paragraph (6) of regulation 14 does not preclude a Presiding Officer from allowing the applicant in this case to have the assistance of an advocate in the disciplinary proceedings against him. On the contrary, it seems to us that the rules of natural justice, which apply in proceedings of this nature with equal force as in other proceedings

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before criminal Courts, require that a person facing charges which may entail such serious consequences as some of those enumerated in the Police (Discipline) Regulations, should be afforded the opportunity to have legal assistance in defending himself unless the Presiding Officer, in exercising his discretion reasonably, is of the opinion that the offence charged is of such a trivial nature or that the request for legal assistance is not justified in the circumstances ;

- (c) as regards the proper order to be made in this particular application, we are of the opinion that, in the light of what we have already said regarding points (a) and (b) above and bearing in mind that the Presiding Officer refused applicant's request because he thought that regulation 14(6) of the Regulations prevented him from allowing the applicant to have legal assistance in the matter, we think that the Presiding Officer will now have no difficulty in exercising his discretion in the proper way in this particular case. We, therefore, think that it is not necessary at this stage to make any provisional order. If, however, the making of such an order will become necessary to enable the applicant sufficiently to defend himself, we shall not hesitate to make the necessary order.