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THE REPUBLIC OF CYPRUS THROUGH THE PUBLIC SERVICE COMMISSION *and* ANTONIOS MOZORAS

[ZEKIA, P., VASSILIADES, MUNIR, JOSEPHIDES, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Appellants,

and

ANTONIOS MOZORAS,

Respondent.

(Revisional Jurisdiction Appeal No. 6).

Constitutional Law; Public Law; Administrative Law—Public Service—Public Officers—Disciplinary control and proceedings—Public Service Commission—Disciplinary competence of that Commission under Article 125, paragraph 1, of the Constitution—Powers and duties of the Public Service Commission thereunder—Case of a public officer already convicted by a criminal court—Whether the disciplinary competence of the said Commission in such case is exercisable independently of the findings of fact made by the criminal court—Or, whether the Public Service Commission are bound to accept the facts as found by the criminal court—Or, whether, though not bound, they are still entitled to accept them without further inquiry, (Morsis case, infra)—Or, whether the said Commission have a constitutional duty always to conduct a full hearing on all matters relevant to the specific disciplinary charge against the public officer concerned—Unfettered by any findings made by a criminal court or civil court——Whether Morsis case (infra) was rightly decided—Article 125, paragraph 1 of the Constitution—Interpretation and effect—Article 124, paragraphs 3 and 5 of the Constitution.

Administrative Law and Constitutional Law—Public Service Commission—Disciplinary competence thereof under Article 125, paragraph, 1, of the Constitution—The Commission is not only entitled but also bound to exercise its aforesaid comptetence under paragraph 1 of Article 125 without awaiting the enactment of legislative provisions regulating the exercise of such competence—And in exercising such competence the Commission will have to act and conduct its inquiry into the disciplinary matter in accordance with the accepted principles of natural justice and administrative law—Natural justice—Principles of—Meaning and scope—See, also, here-

below under Administrative Law, Human Rights—Necessity of enactment of legislation regulating the procedure and principles in the exercise of the disciplinary competence by the Public Service Commission envisaged in Article 125, paragraph 1, of the Constitution.

Administrative Law—Article 146, paragraph 1, of the Constitution—Decision taken contrary to law or in abuse of powers—A decision taken in disregard of the general principles of administrative law is a decision contrary to law in the sense of paragraph 1 of Article 146 of the Constitution—And it may amount, also, to a decision taken in abuse of powers within that paragraph.

Public Law—Res judicata—The judgments of Criminal Courts and their impact on the conduct of disciplinary proceedings regarding public officers—See under Constitutional Law, above, and also under Jurisprudence, below.

Public Service—Public Officers—Public Service Commission—Disciplinary proceedings against public officers before the said Commission—Natural justice—General principles of administrative Law—See under Constitutional Law, Administrative Law, above and Human Rights, below.

Human Rights—Fair hearing—Right to be informed of accusation—Right of being heard—Articles 12, paragraph 5, and 30 of the Constitution—Rome Convention on Human Rights (1950), Article 6—See, also above in this rubric.

Rome Convention on Human Rights—See above.

Constitutional Law and Administrative Law—Droit administratif—Introduced in Cyprus by operation of Article 146 of the Constitution.

Jurisprudence, Public Law—Foreign authorities—Though not binding may be, however, used for guidance.

Stare decisis—Powers to overrule decisions of the former Supreme Constitutional Court—Or of the Supreme Court—By the Supreme Court

The respondent Mozoras, a public officer in the service of the Republic as a driving examiner, was charged on the 22nd August, 1963, with official corruption under section 100(*a*) of the Criminal Code, Cap. 154. The District

Judge of the District Court of Nicosia who tried the case on a plea of not guilty, after hearing six witnesses for the prosecution and five witnesses for the defence (including the accused himself) convicted the accused (now respondent) on the fifth count which charged an offence committed on the 10th August, 1963, that "he (the accused) did corruptly receive the sum of £8 from a certain S.K. in the discharge of his duties of office" contrary to section 100(*a*) of the Criminal Code, and sentenced the accused to a fine of £50, or, in default, to six months' imprisonment. Section 100 (*a*) provides that a person found guilty of official corruption is liable to imprisonment for three years and, also, to a fine. The accused appealed against his conviction and the Attorney-General appealed against the sentence. The appeals were heard and determined on the 12th December, 1963, by the High Court, composed under the provisions of Articles 153.1 and 163.3 of the Constitution. The President and one of the Judges were of opinion that there was ample evidence to support in law the conviction and by a majority of votes (Articles 153.1) they dismissed the appeal against the conviction. The other two Judges were of opinion that the conviction should be set aside. The appeal by the Attorney-General against the sentence was allowed without dissent and the public officer in question was sentenced to one year's imprisonment as from the 12th December, 1963.

On the 4th January, 1964, the Public Service Commission (appellant in the present case) sent a letter to the public officer referring to his conviction and informing him that they had "decided that you should be asked to show cause why you should not be dismissed from the service on account of your conviction", and requesting him to show cause as aforesaid not later than the 18th January, 1964.

On the 11th January, 1964, counsel acting for the public officer addressed a letter to the Commission asking them for more time to enable counsel to put his client's case before the Commission fully, and an extension was granted until the 31st January, 1964. On the 30th January, counsel submitted to the Commission a document consisting of 5½ typed pages setting out at length the reasons why the public officer should not be dismissed and stating that he (counsel) was at the disposal of the Commission "for any additional explanation or clarification you

may need and I am also ready to appear before you for the purpose should you so wish".

In the opening paragraph of his defence to the Commission the public officer's counsel referred to the decision of the Supreme Constitutional Court in the case of *Morsis and The Republic*, decided in February, 1963, and reported in 4 R.S.C.C. 133, and pointed out that in that case it was held that the Public Service Commission although entitled, is not bound to accept the facts as found by the Criminal Court. Basing himself on that proposition counsel submitted that "on the very special facts and circumstances of this case (as set out in his said letter) the Commission is fully entitled not to accept the facts as found by trial Court and to act on its own free judgment in the matter".

Counsel further submitted a great number of reasons why the Commission should uphold the innocence of his client, the public officer in question. On the 11th May, 1964, the Attorney-General recommended to the President of the Republic that the balance of the sentence of imprisonment be remitted and that the public officer be released on the 15th May, 1964. This was approved and the officer was accordingly released. The Attorney-General concluded his recommendation as follows: ".... I suggest that, taking into consideration the judicial disagreement in the matter, the fact that he has already undergone five months' imprisonment and the consequences which the conviction will have on his career, he should be released from prison as from the 15th May, 1964".

On the 10th June, 1964, the Public Service Commission, as stated in their minutes, "after examining carefully the explanations given by this officer's advocates, decided that Mr. Mozoras (the public officer) be informed that the Commission contemplates his dismissal from the service, and that he should be asked to appear before the Commission on the 19th June, 1964, at 9.30 a.m. in order to give reasons why he should not be dismissed. On the 11th June, 1964, the Commission addressed to the public officer a letter informing him accordingly.

The public officer appeared before the Commission on the 19th June, 1964, and the minutes of the Commission show that the Chairman explained to him why he was before the Commission and asked him to give reasons why

he should not be dismissed from the service. The public officer then made a long unsworn statement, which was recorded in the minutes of the Commission, reiterating in substance what he had already stated before the Criminal Court on oath. At the end of his statement he said: "I do not intend to call any witnesses".

On the 7th July, 1964, the Commission decided to dismiss the public officer as from the date of his conviction i.e. the 10th October, 1963. Finally on the 11th July, 1964, the Commission sent to the public officer the letter of dismissal which is the subject of these proceedings. The material part of that letter reads as follows:

> "....after considering the facts and circumstances which led to your conviction and also your own statement made before the Commission on the 19th June, 1964, the Commission decided to accept the facts of the case as found by the trial Court and Court of Appeal as correct. The Commission decided that you should be and you are hereby dismissed from the service as from the date of your conviction, viz. with effect from 15.10.63".

The public officer filed a recourse under the provisions of Article 146 of the Constitution seeking a declaration that the aforesaid decision of the public Service Commission was null and void, and a Judge of this Court, sitting in original jurisdiction declared such decision null and void in the following terms: "The dismissal of applicant is null and void as having been decided in a defective manner and without due regard having been paid to a material consideration and under a misdirection as to the onus of proof; it is thus also a decision reached contrary to law, *i.e.* the properly applicable principles of administrative law, and in abuse of powers of the Commission".

The Public Service Commission appealed to the Full Court against that judgment on a number of grounds and the public officer cross-appealed, but the main questions which fall to be determined in the appeal may be summarized as follows:-

(1) Was the Commission bound by the findings of fact made by a criminal court of competent jurisdiction, as being conclusive evidence of the facts so found? and

(2) Assuming that the Commission was not bound by such findings, was its decision either (a) "contrary to any of the provisions of the Constitution or of any law" (in the sense of paragraph 1 of Article 146 of the Constitution) or (b) was it made "in abuse of powers" (ibid)? Paragraph 1 of Article 125 of the Constitution reads:-

1. Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices.....promote, transfer, retire and *exercise disciplinary control over, including dismissal or removal from office of, public* officers".

On the other hand, paragraph 1 of Article 146 of the constitution provides:-

"1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or 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 abuse of powers vested in such organ or authority or person".

In the case *Morsis and The Republic,* 4 R.S.C.C. 133 it was held at p. 136: "The Commission (viz. the Public Service Commission) has not only been entitled but also bound to exercise its competence under paragraph 1 of Article 125 of the Constitution without awaiting the enactment of legislative provisions regulating any other aspects connected with the exercise of such competence"; and at p. 137: ".....the Commission was entitled, though not also bound, to accept as correct the relevant facts as established to the satisfaction of the Criminal Court concerned, and so long as the Applicant has been given an opportunity to be heard in relation to such facts before the said Court, he need not have been afforded a similar opportunity before the Commission.

The Full Court being equally divided (Zekia P. and Josephides J. for allowing the appeal, Vassiliades and Munir JJ. for the dismissal of the appeal) the appeal was dismissed.

Held, per Vassiliades J.:-

(1)(*a*) The main issue upon which, in my opinion, the present appeal turns is a pure issue of law: Whether or not the Public Service Commission, exercising their functions under Article 125 of the Constitution, are entitled to investigate into a disciplinary matter of this nature, independently of the findings of the Criminal Court in a prosecution turning on more or less the same issues of fact.

(*b*) This question of law was considered and resolved in *Morsis case (supra)*. That, learned counsel for the Commission elaborately argued before us—as he was perfectly entitled to do—that that case was wrongly decided and should no longer be followed.

(2)(*a*) It was held in the *Morsis* case *(supra)* that, *inter alia*, the Public Service Commission, in exercising its competence in disciplinary matters, is entitled, though not also bound, to accept as correct the relevant facts as established to the satisfaction of the Criminal Court concerned, and so long as the applicant—public officer has been given the opportunity to be heard in relation to such facts before the said Court, he need not have been afforded a similar opportunity before the Commission.

(*b*) With all respect to the Court which took this view, I shall confine myself to the observation that the opportunity to be heard before the Commission is not at all "similar" to the opportunity which the public officer in that case had before the Criminal Court—different procedure; different approach; different purpose of the inquiry and very different jury for the finding of the facts.

(*c*) In my judgment the public officer has a constitutional right to a full hearing by the Commission on all matters relevant to the specific disciplinary charges against him. And the Commission have a constitutional duty to conduct such a hearing according to the rules of natural justice, feeling free, unfettered, and unbiassed in their deliberations. To that extent, in my opinion, the decision in *Morsis case* should be carried further regarding the opportunity of the public officer to be heard by the Commission on all matters relevant to the inquiry.

(3)(*a*) It has been submitted in this case that the Com-

mission did afford such an opportunity to the applicant (respondent); and that, in fact, he was heard by the Commission; I find myself entirely unable to accept this submission. In my opinion the very opening of the inquiry by the Commission starting with a decision *nisi* for his dismissal, was a defective approach to the inquiry under Article 125, sufficient to vitiate the rest of the proceedings.

(*b*) I would, therefore, dismiss the appeal.

Held, per Munir J.:-

(1)(*a*) The basic issue to be decided in this appeal is, in my view, whether the legal position regarding the competence of the Public Service Commission in disciplinary matters, where a public officer has been convicted of a criminal offence by a Court exercising criminal jurisdiction, is correctly stated in *Morsis case (supra)* or whether this Court should overrule the decision in question as invited to do so by counsel for the Commission. The relevant passage of the judgment in *Morsis* case *(supra,* at p. 137) reads as follows: "The Court is of the opinion that the Commission was entitled, though not also bound, to accept as correct the relevant facts as established to the satisfaction of the criminal court concerned".

(*b*) In asking the Court to hold that the Commission is bound by findings of fact made in, and the results of, such criminal proceedings, counsel for the appellant Commission has referred us to the position prevailing in other countries, such as Greece, France and Italy and, in support of his submission, has also referred us to various authorities both judicial and academic, from such countries.

(*c*) From an examination of the authorities in question, it appears that the position in such countries is governed in this respect, as would be expected, by the particular constitutional and statutory provisions prevailing in those countries and it has not been proved to my satisfaction that the constitutional and legal position generally in those countries, where it has been held that administrative bodies in dealing with disciplinary offences committed by public servants are bound by the findings of fact and conclusions of criminal court, are in any way similar to, or correspond with, the position created in Cyprus by the provisions of Article 125 of the Constitution which have not, as yet, been

supplemented by any statutory provisions governing the matter. The system of criminal law and procedure and the system of administration of criminal and civil justice generally in Cyprus are quite different from the criminal law and procedure prevailing in the countries referred to by counsel for the Commission (appellant).

(2)(*a*) As stated by the Supreme Constitutional Court in the *Morsis* case *(supra,* at p. 136), "the Commission has not only been entitled but also bound to exercise its competence under paragraph 1 of Article 125 of the Constitution *(supra)* without awaiting the enactment of legislative provisions regulating any other aspects connected with the exercise of such competence". I fully endorse this view.

(*b*) Thus, even in the absence of any legislative provision laying down the procedure generally to be followed by the Commission and the precise manner in which the Commission should, *inter alia,* "exercise disciplinary control.... over public officers" and particularly as to how it should conduct inquiries into the commission of disciplinary offences by public officers, the Commission, in my opinion must, nevertheless, and notwithstanding the absence of such complementary legislation, exercise and perform the powers and duties laid down in the Constitution (Article 125.1) as best it can, unaided by such legislation, in accordance with the accepted and fundamental principles of natural justice and of administrative law generally. As it has been stated by our courts, time and again, the Public Service Commission in exercising disciplinary control "has to comply with certain well established principles of natural justice and the accepted procedure governing dismissal of public officers". (Vide *Marcoullides and The Republic,* 3 R.S.C.C. 30, at p. 35; *Haros and The Republic,* 4 R.S.C.C. 39, at p. 44; *Pantelidou and the Republic,* 4 R.S.C.C. 100, at p. 106 and *Morsis and The Republic* 4 R.S.C.C. 133, at p. 137).

(3) I fully endorse the conclusion reached and the additional reasons given by the Judge in his judgment appealed from why he considers the decision in *Morsis* case (*supra*) as correctly made in the light of our Constitution and the legal position prevailing in Cyprus, which reasons were as follows:

"In Cyprus.....the Commission has been held

(in *Morsis* case, *supra)* to have a rather greater latitude, and, in my opinion, quite rightly so, in view, especially, of the particular position of the Commission, as an independent organ, in the structure of the State; it must be borne in mind that in countries where no such latitude exists disciplinary measures may be taken, to a large extent, by the hierarchically superiors of the officer concerned and that such superiors do not possess the independent status possessed by the Commission. Moreover, such latitude is not inconsistent, either, with analogous judicial concepts prevailing in Cyprus by virtue of which facts found by a criminal Court are not accepted without fresh proof in civil proceedings arising out of the same set of circumstances".

(4)(*a*) I am, therefore, of the opinion that on the authority of *Morsis* case *(supra)* it is open to the Commission, in cases where it considers it proper so to do, to conduct its own inquiry into the question of whether or not the public officer, who has already been convicted of a criminal offence, has or has not also committed a disciplinary offence; and not to accept for the purposes of such disciplinary proceedings the findings of fact made by the criminal court.

(*b*) Having regard to the special facts and circumstances of the present case, I agree with the conclusions reached by the Judge that "it was properly and reasonably open to the Commission in the circumstances of this case to decide to examine itself the facts and circumstances which led to applicant's (respondent's) conviction".

(5) Having been satisfied that the Commission did in fact proceed to conduct an inquiry of its own into the facts relating to the guilt or innocence of the public officer concerned in this case, I am not satisfied that the inquiry was properly conducted in accordance with the principles of natural justice and of administrative law generally. I have given this matter careful consideration and having examined the reasons given by the Judge for coming to the same conclusion, I have not been persuaded by counsel for the Commission that such reasons were not sound and I can myself see no reason for differing from them.

(*b*) In the result, I would dismiss the appeal.

Held, per Josephides, J.:

(1)(*a*) The whole case turns on the construction which may be placed on Article 125, paragraph 1, of the Constitution *(supra)*. Under that paragraph it is the duty of the Public Service Commission, *inter alia*, to exercise disciplinary control over, including dismissal or removal from office, of public officers. The question which arises for consideration is, in the absence of any express statutory provision, laying down the procedure to be followed, the rules of evidence to be applied, on conferring any powers on the Commission, what is the proper course to be followed by the Commission in carrying out that duty?

(*b*) As held in previous cases, the Commission in exercising disciplinary control has to comply with certain well established principles of natural justice and the accepted procedure governing dismissal of public officers (vide: *Marcoullides and The Republic*, 3 R.S.C.C. 30, at p. 35).

(c) But there is ample authority for the proposition that in applying the rules of natural justice there is no obligation on the disciplinary tribunal to adopt the regular forms of judicial procedure. In short, it is not required of a tribunal to conduct itself as a court of law or to conduct a trial. Provided they act in good faith they can obtain information in any way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view (vide the various authorities quoted in the judgment of Josephides, J.).

(2)(*a*) I now revert to the construction of Article 125, paragraph 1, of the Constitution *(supra)*, that is to say, whether in carrying out their disciplinary inquiry under the principles of natural justice the Commission are bound by the findings found by a Criminal Court.

(*b*) In Greece it was held by the Council of State in Case No. 125/1929 that when a criminal court within its competence finds on the basis of legal evidence that a public officer is guilty of an offence it is incumbent on the administration to respect this finding in the exercise of disciplinary authority and to accept as true what has been decided by the criminal court; and the Council of State expressed the view that the criminal trial provides more safeguards

for the accused than the disciplinary proceedings. It would seem that the same principles are accepted in France and Italy.

(*c*) Undoubtedly we are not bound by any Greek, French, Italian or any other continental judicial or academic authority, but in formulating our own principles of administrative law we are prepared to look for guidance to these authorities and, in the absence of any statutory provision in Cyprus, to adopt them provided we agree with the reasoning behind them.

(3)(*a*) Relying on the reasoning in the decision of the Greek Council of State No. 125/1929 *(supra)* and having regard to the other French and Italian authorities, I have formed the view that, in the absence of any express statutory provision to the contrary, Article 125, paragraph 1, of the Constitution *(supra)* should be construed in such a way that the Public Service Commission should be bound by the findings of fact made by a criminal court of competent jurisdiction, save in very exceptional cases, e.g. where fresh evidence is tendered to the Commission; but certainly not in cases where the same evidence, which was heard by the criminal court, is called by the public officer before the Commission. Because in that case, it would be against public policy for the Commission to hear the same witnesses all over again, without the safeguards as to composition, procedure and powers of criminal courts, *e.g.* sworn testimony subject to cross-examination, exclusion of hearsay evidence, proof beyond reasonable doubt, compulsion of witnesses to appear and answer questions put to them, trial by trained specialists, etc., and to be free to make a finding contrary to the verdict of a criminal court. This would be contrary to the public interest as it would shake the confidence of the public in the courts and thus undermine the administration of justice in the Republic.

(*b*) Considering the safeguards as to composition, procedure, rules of evidence and powers of criminal courts, I am of the view that such courts are in a better position to decide finally and conclusively as to the guilt or innocence of a public officer.

(4) It, therefore, follows that I would, with respect, overrule the decision in the *Morsis* case *(supra)*.

(5)(*a*) Assuming that on the authority of the *Morsis* case *(supra)* the Commission was entitled, though not also bound, to accept as correct the facts as found by the criminal court, is the decision of the Commission in this case either (*a*) "contrary to any of the provisions of the Constitution or of any law", or (*b*) was it made "in abuse of powers" (Article 146, paragraph 1, of the Constitution, *supra)*?

(*b*) As already observed, there is ample authority that the inquiry to be carried out by the Commission in accordance with the principles of natural justice need not be an inquiry following the same procedure as in a court of law and that evidence does not mean only oral evidence. They may receive written evidence or the sworn evidence already taken before the criminal court and on the authority of the *Spackman* case *(infra)*, the decree of the Divorce Court provides a strong *prima facie* evidence which throws the burden on him who seeks to deny the charge.

(*c*) In the circumstances of this case and considering the way the Commission conducted its inquiry, I am of the view that the Commission gave a fair hearing to the public officer, that they observed all the principles of natural justice and that it cannot be said that their decision is either contrary to any of the provisions of the Constitution or of any law or was made in abuse of powers.

(6) I would, therefore, uphold their decision, allow the appeal and set aside the declaration that the dismissal of the public officer is null and void.

Held, per Zekia, P.:-

(1) In the absence of any special enactment governing the procedure to be followed by the Public Service Commission when functioning under paragraph 1 of Article 125 of the Constitution *(supra)*, the Commission had to be guided by the principles of natural justice. It does not appear to me that in this particular case any of the rules of natural justice have been violated.

(2) As to other issue incidentally raised, namely, whether the Public Service Commission is bound by findings of fact on which a conviction is based by a competent criminal court, respondent's counsel relying on *Morsis*

case *(supra)* argued that the Commission was not bound by such findings which constitute the elements of the offence. Strictly speaking, this point need not necessarily be decided in this case, since the Commission, acting independently on facts leading to the officer's conviction and considering itself unfettered by such findings, directed the dismissal of the public officer. For future guidance, however, this point might also be considered.

(3) Apart from any continental and English authorities on the point there is no law here making facts, on which a conviction is based by a competent criminal court, binding on the Public Service Commission. I feel, therefore, that we are at liberty to pave our own way in this direction. In doing so, we may be usefully be guided by foreign authorities. It is of some importance to know that the Council of State of Greece, before the enactment of any relevant law, decided in 1929, that facts on which a conviction is based by a competent criminal court, are binding on a disciplinary tribunal.

(4)(*a*) I would respectfully follow such authorities and I would say that such facts must be accepted and binding on the Commission, even if not by force of law, as a matter of established practice, unless exceptional circumstances, such as exculpatory fresh material not available before the criminal court, becomes available before the Commission.

(*b*) I consider highly impracticable and undesirable for the Public Service Commission to stage a trial with a view to ascertaining facts leading to a conviction already made by a proper court of law. The Commission, no doubt, is fully entitled to go into the nature of the offence committed and to the surrounding circumstances with a view to finding for itself whether the offence committed involves moral turpitude and whether the conduct of the officer calls for disciplinary punishment.

(5) I would, therefore, allow the appeal.

In the result, the Court being equally divided, the appeal will have to be dismissed. Points raised on the cross-appeal need not be dealt with in view of the dismissal of the appeal.

Appeal and cross-appeal dismissed. Each party to bear its own costs in the appeal.

Per Munir, J.: The enactment of organic legislation regulating, *inter alia,* the practice and procedure generally of the Public Service Commission, and in particular the procedure to be followed by it when holding inquiries into the commission of disciplinary offences by public officers (including such matters as the power to summon witnesses and to hear evidence on oath, etc.) is long overdue. It is most unfortunate that such legislation is still non existent.*

Per Josephides, J.: It is, I feel, unfair on the members of the Public Service Commission to be expected to grope their way through the maze of legal concepts and principles applicable by other countries without a clear-cut code of procedure and principles. The enactment of the proposed Law would, undoubtedly, help to dispel the present confusion.*

Cases referred to:

Morsis and The Republic, 4 R.S.C.C. 133, at pp. 136, 137;

Dunne v. Dunne (1966) 1 C.L.R. 164;

Markoullides and The Republic, 3 R.S.C.C. 30, at p. 35;

Haros and The Republic, 4 R.S.C.C. 39, at p. 44;

Pantelidou and The Republic, 4 R.S.C.C. 100, at p. 106;

General Council of Medical Education and Registration of the United Kingdom v. Spackman [1943] 2 All E.R. 337; and, also, at pp. 339, 340, 341, 342, 345 and 346; H.L.;

Spackman's case *(supra)* [1942] 2 All E.R. 150, at pp. 152-3, C.A.;

Photiades and The Republic, 1964 C.L.R. 102;

R. v. *Bickley* (1909) 2 Cr. App. Rep. 53;

Reg. v. Mullins (1848) 3 Cox's Criminal Law Cases 526, at pp. 531 and 532;

Leason v. *General Council of Medical Education* [1889] 43 Ch. D. 366, at p. 383;

*Such legislation has been enacted in 1967 (vide Law No. 33/67).

Local Government Board v. *Arlidge* [1915] A.C. 120; and at pp. 132, 140;

Bentley's case (1723) 1 Stra. 557;

Hollington v. *Hewthorn and Co., Ltd.* [1943] 2 All E.R. 35, C.A.; and at pp. 39, 40 and 43;

Decisions of the Greek Council of State:

Case No. 125/1929 in Decisions of the Council of State, 1929, pp. 196-197;

Case No. 1/1937 in Decisions of the Council of State, 1937, A1, pp. 4-5;

Case No. 381/1930 in Decisions of the Council of State, 1939, A, pp. 523-4;

Vide, also, Conclusions from the Jurisprudence of the Council of State, 1929 to 1959, p. 364. («Πορίσματα Νομολογίας Συμβουλίου Ἐπικρατείας, 1929 ἕως 1959, σελ. 364);

Decisions of the French Council of State:

Veuve Trompier-Gravier decided by the French Conseil d' Etat on the 5th May, 1944;

Sieur Chomat, decided on the 11th May, 1956;

Sieur Ranaivo decided on the 8th April 1959;

Claude Durant Nos. 214 and 219 of 1956;

Italian Cases:

See the cases cited in "Massimario della Giurisprudenza del Consiglio di Stato, 1932-1962, paragraph 357, decision dated the 7th November, 1958, and paragraph 331, decision dated the 13th June, 1961.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Triantafyllides, J.) given on the 10th September, 1965, (Revisional Jurisdiction Case No. 93/64) whereby the decision of the Public Service Commission to dismiss applicant from the public service was declared *null* and *void.*

K. Talarides, Counsel of the Republic, for the Appellant.

A. Triantafyllides, for the Respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgments delivered by the learned Justices.

ZEKIA, P.: There will be delivered three separate judgments in this appeal. I will be concurring with one of them, namely, with the judgment of Mr. Justice Josephides. I propose to say a few words, however, for doing so after the conclusion of the delivery of the said judgments.

VASSILIADES, J.: I have had the advantage of reading the judgment prepared by Mr. Justice Munir, after the consultation we all had in this case. Subject to a reservation I have regarding *Morsis* Case, to which I shall refer later, I agree with his approach to the problem and with the conclusion he reaches both regarding the appeal and the cross-appeal.

Where there is legislation governing a case it is the duty and responsibility of the Court to apply it. And, where the language used by the legislative authority to express their intention in the matter is not clear enough, it is the function of the Court to look for that intention in the whole of the enactment and to interpret it for application in the particular case, according to the accepted rules of interpretation. Academic pronouncements on the position existing in a parallel situation in other countries have to be very carefully approached as they often tend to confuse rather than clarify the application of the actual legislation governing the matter. It must be assumed that the legislator had in mind or could have recourse to academic opinions, or parallel legislation in other countries, when drafting and eventually enacting the statutory provisions which the Court has to apply in the particular case. If these are sufficiently clear, they should be applied in their actual form; and, if that appears to be in any way unsatisfactory, it is for the legislator and not for the Court to alter the existing law.

With this approach I may now proceed with the case in hand. The applicant was an officer in the public service. He was a driving examiner in connection with the issuing of motor car licences; and was convicted in the District Court

of Nicosia for accepting a bribe in the course of his work, contrary to Section 100 *(a)* of the Criminal Code, (Cap. 154).

Some time after his conviction, the applicant was called upon by the Public Service Commission, to show cause why he should not be dismissed from the public service, on account of his conviction. *(Exhibit 1;* dated 4.1.64). In doing so the Commission were apparently purporting to exercise their powers under Article 125 of the Constitution, which provides that—

> "Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph, and subject to the provisions of any law, *it shall be the duty* of the Public Service Commission to .....appoint.....promote, transfer, retire, and *exercise disciplinary control over*, including dismissal or removal from office, of public officers".

I have underlined the parts where, I think, stress should be laid in considering this case. And, in this connection, I think that one should bear in mind that the respondents are a Constitutional body of Public Administration, consisting of ten members, holding office for a period of six years, (Article 124.3); who cannot be removed from office "except on the like grounds and in the like manner as a Judge of the High Court" (Article 124.5). A body of peculiar structure, as far as I am aware, established under the Constitution of the Republic of Cyprus in such a manner as to be free of political influence and independent of the executive Government, apparently for the protection and proper management of the Public Service.

It may be added here that Article 125, which lays down the duties of the Commission, provides also that their decisions "shall be taken by an absolute majority vote of *its members*" (Article 125.3(1)); and that "no meeting shall be held unless prior notice thereof has been given *to all the members*" (Article 125.2*(a)*). Such is the collective organ whose decision is the subject matter of the recourse under consideration.

When called upon to show cause why he should not be dismissed on account of his conviction, the applicant consulted a firm of well-known lawyers and put himself in their hands. In due course, applicant's advocate submitted to the

Commission *exhibit 4*, where in a five page document, presented in legal form, a number of reasons were given on behalf of the applicant, why he should not be dismissed from the public service.

His case was put on facts and considerations which, if correct, would be sufficient to show that applicant was the victim of a trap; and that his conviction rested on the false evidence of an accomplice, unreasonably accepted by the trial Judge. The accusation of bribery was entirely denied. I find it unnecessary to go into further detail. It is enough, I think, for the purposes of this judgment, to say that *exhibit 4* undoubtedly presents a case for investigation which, applicant's advocate, relying on the decision of the Supreme Constitutional Court in *Morsis Case* (4 R.S.C.C. p. 133) invited the Commission to investigate in the exercise of their competence under Article 125.

> "Basing myself on the above mentioned case (Counsel wrote in para. 1 of *Exhibit 4*) I submit that on the very special facts and circumstances of this case, as set out herein, the Commission is fully entitled not to accept the facts as found by the trial Court and to act on its own free judgment in the matter".

I have given here verbatim this part of the case presented to the Commission by the applicant's advocate, because it contains the main issue upon which, in my opinion, the present appeal turns; a pure issue of law: whether or not the Public Service Commission, exercising their functions under Article 125 of the Constitution, are entitled to investigate into a disciplinary matter of this nature, independently of the findings of the Criminal Court in a presecution turning on more or less the same issues of fact.

As stated already, this question of law was considered and resolved in *Morsis Case (supra)*. But, learned counsel for the Commission elaborately argued before us—as he was perfectly entitled to do—that that case was wrongly decided and should no longer be followed.

Same as in the present case, *Morsis* was a civil servant; he was a Court Bailiff. He was prosecuted, tried and convicted by the Court to which he was attached as a Bailiff, for falsely swearing an affidavit of service. Following upon his conviction the Public Service Commission considered the

Court proceedings and decided to dismiss Morsis without further inquiry; and without affording him an opportunity to be heard in the matter. The same counsel of the Republic, Mr. K. Talarides, argued that case also on behalf of the Commission, before the Supreme Constitutional Court, in January, 1963, presumably with similar ability and force.

The issues for decision in that case, as stated in the Judgment, at page 136, were:—

(i) whether or not the Commission had competence in the matter;

(ii) whether or not the failure to afford applicant an opportunity to be heard, vitiated the validity of the decision to dismiss him.

As to the first issue, the Supreme Constitutional Court (whose competence to decide the matter was never questioned) after stating the relevant part of Article 125, took the view that—

> "as the Commission is set up as a body by the Constitution itself, and without the necessity of an organic law intervening for the purpose, as its members are appointed directly under the Constitution and as some aspects of its procedure are already regulated by the Constitution, the Commission is not only entitled but also bound to exercise its competence under paragraph 1 of Article 125, without waiting the enactment of legislative provisions regulating any other aspects connected with the exercise of such competence". (At page 136 G).

To say now—as learned counsel for the Commission seems to suggest—that in the exercise of such competence the Commission should feel bound by the findings of fact made by a Criminal Court, in a proceeding conducted for a different purpose, under the special rules of procedure and evidence applicable in such Court, which may well be very different from the Commission's method of inquiry, would, in my opinion, be contrary to the letter and spirit of the relevant Constitutional provisions, clearly expressed in plain language.

I cannot see how the Commission would be able to exercise in a satisfactory manner disciplinary control over public officers which could result in "dismissal or removal from

office", without having the duty and the power to make the fullest possible inquiry into the matter. And, I respectfully and completely share the view taken by the Constitutional Court in *Morsis Case*, that the Commission in the exercise of their competence under Article 125, would have the duty to inquire into the conduct of a public officer, whether such conduct had, or had not, been the subject of criminal or other proceedings before a Court of law; and regardless of the result of any such proceedings, the nature, form, and object of which, are different.

As to the second issue (regarding an opportunity to be heard by the Commission) the view taken by the Supreme Constitutional Court, was—

> ".....that the Commission was entitled, though not also bound, to accept as correct the relevant facts as established to the satisfaction of the Criminal Court concerned, and so long as the Applicant has been given an opportunity to be heard in relation to such facts before the said Court, he need not have been afforded a similar opportunity before the Commission". (p.137 H).

With all respect to the Court which took this view, I shall confine myself to the observation that the opportunity to be heard before the Commission is not at all "similar to the opportunity which the applicant had before the Criminal Court—different procedure; different approach; different purpose of the inquiry; and, very different "jury" for the finding of the facts.

A criminal trial in our Courts is a completely independent and substantially different proceeding from the trial of a civil action or of a matrimonial cause, turning on the same, or partly the same, set of facts. Each Court in such a case will have to make its own findings, on the evidence properly adduced and admitted in the particular proceeding, feeling perfectly unfettered by any findings made by any other Court. And, in my view, this presents an advantage in our legal practices, in the interest of justice. Academic pronouncements made in countries with fundamentally different legal systems; on the basis of legislation different to ours; and made in circumstances unknown to me, cannot affect my judgment in the present case. The matter, I think, is so clear in its legal aspect that it needs no further elaboration. I shall only refer by way of example, to an actual case to

illustrate the practical aspect of the matter.

In a matrimonial cause before this Court *(Chrysso Dunne* v. *James Dunne*, Petition 10/1965),* the petitioning wife was praying for the dissolution of her civil marriage with the respondent on the ground of cruelty. Her complaint was that her husband induced her and her family to agree to the marriage by fraudulently misrepresenting himself as a medical student almost ready for his doctor's qualification, while in fact he was an Army deserter wanted by the Police. Soon after the marriage, and when he had known her as his wife, he used violence in order to force her to sexual relations against the order of nature. When she resisted, he beat her and wounded her. In one of such scenes her mother went into the room and took the wife away with a bleeding lip and other injuries. Soon after the husband disappeared leaving a note with an apology for his conduct. When the Police were called in, a few days later, they discovered that he had fled the island.

The suit was undefended; but on the evidence adduced, which amply corroborated the version of the wife, the Court found accordingly and granted her a decree *nisi*. Can anyone now suggest that the findings of the Court in this matrimonial cause, constituting, as they must do, a *res judicata* between these parties as far as the wife's complaints are concerned, for false pretences, assault, wounding, sexual perversion etc., should in any way affect the position of the husband if ever charged in a Criminal Court in this country for the offences proved in the matrimonial proceeding? And will there be anything incompatible with good law or proper administration of justice, if the Criminal Court on the evidence then before them, acquitted the accused of one or more of the charges?

And assuming that the husband in question were a person in the Public Service of Cyprus, would it be either legal or fair for the Commission in purporting to deal with him under Article 125 of the Constitution, to call upon him to show cause why he should not be dismissed for the abominable conduct found by the Matrimonial Court, instead of charging him with specific disciplinary offences, and conducting a fresh inquiry therein?

*Reported in (1966) 1 C.L.R. 164.

In my judgment, the public officer in such a case has a constitutional right to a full hearing by the Commission on all matters relevant to the specific disciplinary charges against him. And the Commission have a corresponding constitutional duty to conduct such a hearing according to the rules of natural justice, feeling free, unfettered, and unbiassed in their deliberations; and appearing to be so free, unfettered and unbiassed, to all concerned with the performance of their public duty. To that extent, in my opinion, the decision in *Morsis Case* should be carried further regarding the opportunity of the public officer to be heard by the Commission on all matters relevant to the inquiry.

It is submitted in this case that the Commission did afford such an opportunity to the applicant; and that, in fact, he was heard by the Commission. I find myself entirely unable to accept this submission. In my opinion the very opening of the inquiry by the Commission starting with a decision *nisi* for his dismissal, was a defective approach to an inquiry under Article 125, sufficient to vitiate the rest of the proceedings. If the legislator did not intend this position, or they wished it altered, they must make the appropriate legislative amendments. That is their responsibility, and not the function of this Court.

Having reached this conclusion, I consider it unnecessary to deal further with the kind of inquiry actually carried out. I think I have already indicated sufficiently the view I take of the nature of such proceedings. What falls to be decided in this appeal is whether the trial Judge's decision to annul the Commission's dismissal of the respondent should be set aside. Far from having been persuaded positively that his judgment is wrong, I am convinced after the exhaustive argument advanced on behalf of the parties before us that the learned trial Judge was right in following *Morsis Case* and has rightly decided the case before him. I would dismiss the appeal. This result also disposes, I think, of the cross-appeal, leaving the issue raised therein open for consideration and decision when need arises. I would, therefore, also dismiss the cross-appeal with no order as to costs.

MUNIR, J.: This is an appeal and cross-appeal from a judgment of a Judge of this Court, which was given on the 10th September, 1965, in exercise of the Court's revisional

jurisdiction, in a recourse made under Article 146 of the Constitution.

The Respondent in the appeal (who was the Applicant in the original recourse and who, for the sake of convenience, will continue hereinafter in this judgment to be referred to as "the Applicant") had, by an Application filed on the 31st July, 1964, applied to the Court for a declaration that the decision of the Public Service Commission (hereinafter referred to as "the Commission"), which was taken on the 7th July, 1964, and communicated to the Applicant on the 10th July, 1964, to dismiss him from the public service with effect from the 15th October, 1963, is *null* and *void*. The learned trial Judge (hereinafter referred to as "the Judge") declared the aforesaid decision of the Commission to be *null* and *void* with the result that, as pointed out by him in his judgment, the matter was left open for reconsideration by the Commission.

The history of this Case, culminating in the aforesaid decision of the Commission to dismiss the Applicant and in the subsequent filing of the recourse, is fully and clearly set out by the Judge in his Judgment and it is not necessary to repeat it again here for the purposes of this judgment.

The Commission's appeal to this Court is based on the five grounds set out in the Notice of Appeal filed on the 22nd September, 1965, and on the additional ground filed on the 12th February, 1966. The Respondent in the main appeal (i.e. the Applicant) has cross-appealed on the two grounds set out in the written Notice of Cross-Appeal filed on the 18th October, 1965.

Dealing first with the appeal of the Commission, the appeal was argued by learned Counsel for the Commission on the following four issues:—

(i) that the Judge had wrongly regarded the proceedings in question before the Commission as being proceedings for the determination of the guilt or innocence of the Applicant, whereas in fact, learned Counsel submitted, the issue before the Commission was not one of guilt or innocence, but was whether the Applicant, having been convicted of a criminal offence, should be dismissed from the public service;

(ii) that the Judge was wrong in following the decision

of the Supreme Constitutional Court in *Morsis and The Republic* (4 R.S.C.C., p. 133 at p. 137) that "the Commission was entitled, though not also bound, to accept as correct the relevant facts as established to the satisfaction of the criminal court concerned";

(iii) that the Judge was wrong in coming to the conclusion that "the Commission was, in effect, conducting an inquiry of its own into the facts relating to the guilt or innocence of Applicant";

(iv) that the Judge was wrong in concluding that the proceedings conducted by the Commission were irregular.

The basic issue to be decided in this appeal is, in my view, Issue No. *(ii)* above, that is to say, whether the legal position regarding the competence of the Commission in a case of this nature, where a public officer has been convicted of a criminal offence by a court exercising criminal jurisdiction, is correctly stated in *Morsis and The Republic (supra)* or whether this Court should overrule the decision in question as invited so to do by learned counsel for the Commission.

The relevant passage of the judgment of the Court in *Morsis and The Republic* (*supra*, at p. 137) reads as follows:—

> "The Court is of the opinion that the Commission was entitled, though not also bound, to accept as correct the relevant facts as established to the satisfaction of the criminal court concerned".

In asking the Court to hold that the Commission is bound by findings of fact made in, and the results of, such criminal proceedings, counsel for the Commission has referred us to the position prevailing in other countries, such as Greece, France and Italy and, in support of his submission, has also referred us to various authorities, both judicial and academic, from such countries.

From an examination of the authorities in question, it appears that the position in such countries is governed in this respect, as would be expected, by the particular constitutional and statutory provisions prevailing in those countries and it has not been established to my satisfaction that the constitutional and legal position generally in those countries,

where it has been held that administrative bodies in dealing with disciplinary offences committed by public officers are bound by the findings of fact and conclusions of a criminal court, are in any way similar to, or correspond with, the position created in Cyprus by the provisions of Article 125 of the Constitution which have not, as yet, been supplemented by any statutory provisions governing the matter. The system of criminal law and procedure and the system of administration of criminal and civil justice generally in Cyprus are quite different from the criminal law and procedure prevailing in the countries referred to by learned counsel for the Commission.

On the one hand, by Article 146 of our Constitution, a system of administrative law of a nature which it might be said is similar to that prevailing in the other European countries referred to by counsel for the Commission has been introduced in Cyprus, but, on the other hand, we must not lose sight of the fact that the system of criminal law and procedure at present prevailing in Cyprus is not akin to that existing in such European countries, but is the Anglo-Saxon system based on the English Common Law. In my opinion the correct legal position in Cyprus in this matter must be ascertained by reference to the relevant constitutional and other provisions prevailing in Cyprus and not by reference to judicial or academic opinions expressed in other countries in the context and background of the legal system and legislation prevailing in such other countries.

In Cyprus, by paragraph 1 of Article 125 of the Constitution, the Commission, *inter alia*, has been charged, in express and unequivocal language, to "exercise disciplinary control over, including dismissal or removal from office of, public officers".

It is true that no legislative provision has, as yet, been made regulating the conduct and procedure of the Commission in the exercise of the powers vested in it by Article 125 of the Constitution as might have been expected, and the enactment of such organic legislation is, in my view, long overdue. Nevertheless, as stated by the Supreme Constitutional Court in *Morsis and The Republic (supra*, at p. 136), "the Commission has not only been entitled but also bound to exercise its competence under paragraph 1 of Article 125 *without awaiting the enactment of legislative provisions regul-*

ating any other aspects connected with the exercise of such competence". I fully endorse this view and see no reason for departing from it.

Thus, even in the absence of any legislative provision laying down the procedure generally to be followed by the Commission and the precise manner in which the Commission should, *inter alia*, "exercise disciplinary control over..... public officers" and particularly as to how it should conduct inquiries into the commission of disciplinary offences by public officers, the Commission, in my opinion, must, nevertheless, and notwithstanding the absence of such complementary legislation, exercise and perform the powers and duties laid down in the Constitution as best it can, unaided by such legislation, in accordance with the accepted and fundamental principles of natural justice and of administrative law generally.

It has already been stated by our courts, time and time again, that the Commission in exercising disciplinary control "has to comply with certain well-established principles of natural justice and the accepted procedure governing dismissal of public officers"—*(vide Markoullides and The Republic*, 3 R.S.C.C. p. 30, at p. 35; *Haros and The Republic*, 4 R.S.C.C. p. 39, at p. 44; *Pantelidou and The Republic*, 4 R.S.C.C. p. 100, at p. 106 and *Morsis and The Republic (supra*, at p. 137).

In his judgment (at p. 36 of the record) the Judge gives additional reasons of his own why he considers that the decision in question in *Morsis and The Republic (supra)* was correctly made in the light of our Constitution and the legal position prevailing in Cyprus. The relevant portion of his judgment on this point reads as follows:—

> "In Cyprus, as already stated, the Commission has been held (in *Morsis* case, above) to have a rather greater latitude, and, in my opinion, quite rightly so in view, especially, of the particular position of the Commission, as an independent organ, in the structure of the State; it must be borne in mind that in countries where no such latitude exists disciplinary measures may be taken, to a large extent, by the hierarchically superiors of the officer concerned and that such superiors do not possess the independent status possessed by the Commission. Moreover, such latitude is not inconsistent, either, with

the analogous judicial concepts prevailing in Cyprus by virtue of which facts found by a criminal Court are not accepted without fresh proof in civil proceedings arising out of the same set of circumstances".

I fully endorse these additional reasons given by the Judge.

As pointed out in the Court's judgment in *Morsis and The Republic* (*supra* at p. 137) the Commission is perfectly entitled, if it so decides, to accept as correct the relevant facts as established in the criminal proceedings in respect of the same subject-matter which is before the Commission for disciplinary purposes, but I feel that it should, at the same time, be open to the Commission, in the absence of legislation regulating the matter, in cases where the Commission thought that it would be in the interests of the proper discharge of its duties under Article 125 of the Constitution, not to be bound by the conclusions reached by the criminal courts in criminal proceedings but to be able to inquire into the matter again from the point of view of disciplinary proceedings and the interests of the public service and not, as in the case of criminal proceedings, from the point of view of whether a criminal offence, as such, has been committed.

The principle that a disciplinary body, which is conducting disciplinary proceedings for disciplinary purposes should not be bound by the findings of a judicial tribunal which has considered the same events or incidents, not from the point of view of discipline but, for example, for the purpose of matrimonial proceedings, is well illustrated by the well-known case of the *General Council of Medical Education and Registration of the United Kingdom* v. *Spackman* ([1943] 2 All E.R. p. 337) which was cited to us by learned counsel for Applicant. The head-note of that case reads as follows:-

"On the hearing of a petition for divorce S., a registered medical practitioner, was found to have committed adultery with a married woman. The General Medical Council, at a meeting at which the erasure of his name from the medical register was considered, found that he stood in a professional relationship to the married woman at all material times and adjudged him to have been guilty of infamous conduct in a professional respect. In accordance with the council's standing orders, S. was invited 'to state his case and produce the evidence in support of it'. S. sought to

negative the court's finding of adultery by tendering evidence which, though available, was not called in the divorce proceedings. The council refused to hear fresh evidence on the subject, and directed the erasure of S.'s name from the register. S. contended that by reason of the council's refusal to hear the evidence, the due inquiry required by the Medical Act, 1858, s.29 had not been held and there had been a failure of natural justice:-

Held: The refusal to hear the fresh evidence prevented there being the due inquiry required by the Medical Act, 1858, s. 29, and an order of *certiorari* should be granted".

The Spackman Case was concerned with an inquiry by the General Medical Council under s.29 of the Medical Act, 1858, of the United Kingdom. That section provided that—

> "If any registered medical practitioner shall be convicted..... of any felony or misdemeanour..... or shall after due inquiry be judged by the general council to have been guilty of infamous conduct in any professional respect, the general council may, if they see fit, direct the registrar to erase the name of any such medical practitioner from the register".

Viscount Simon, L.C., in the opinion which he delivered in the House of Lords in the *Spackman Case* pointed out (at p. 340)—

> "that while the council might well treat the conclusion reached in the courts as *prima facie* proof of the matter alleged, it must when making 'due inquiry' permit the doctor to challenge the correctness of the conclusion and to call evidence in support of his contention. The previous decision is not between the same parties; there is no question of estoppel or of *res judicata.* In such cases the decision of the courts may provide the council with adequate material for its own conclusion if the facts are not challenged before it, but, if they are, the council should hear the challenge and give such weight to it as the council thinks fit".

As pointed out by Viscount Simon at the end of his opinion (at p. 341)—

> "If it was considered desirable to make the decision

of the Divorce Court conclusive and so to prevent the possibility of a second hearing on the issue of adultery, this could only be brought about by amending sect. 29".

The following passage from the opinion delivered by Lord Wright in the *Spackman Case* (at p. 342) is also of interest with regard to the nature and status of a disciplinary body conducting a disciplinary inquiry—

> "The council is not a court of law. No particular procedure is prescribed. It can determine its own procedure. It has not the usual powers of a court of law. It has no power to compel the attendance of witnesses or to take evidence on oath or to order discovery of documents or the production of documents. It is not bound by laws of evidence.
>
> . . . . . .
>
> "It is not to be contemplated that the council would proceed without solid *prima facie* grounds or otherwise than in good faith".

Later on in his opinion Lord Wright (at p. 345) points out, as did Viscount Simon, that—

> "The legislature has not made a decree of the Divorce Court conclusive on the question of adulterous conduct, in the same way as it has made a conviction of felony or misdemeanour conclusive. . . . Parliament, when it thinks fit, can clearly and effectively put a decree of adultery of the Divorce Court on the same footing for the purpose of disqualifying the offender as a conviction of treason and felony. . . . . In section 29 Parliament has not done so, but has put convictions for felony and misdemeanour in a special category by themselves. In other cases than these the offences charged must be proved independently by some evidence which the council can accept. Thus the decree is *prima facie* but no more than *prima facie* evidence. . . . . "

Just in the same way as the legislature in the United Kingdom had thought fit at the time the *Spackman Case* was decided not to make the decree of a Divorce Court, or indeed the result of any judicial proceedings, other than a conviction for felony or misdemeanour, conclusive on the question of whether a doctor has been guilty of infamous conduct, so in Cyprus neither our Constitution, by Article 125 thereof,

nor, till now, our legislature, has thought fit to make any statutory provision making either the conclusions of criminal proceedings or any other judicial proceedings conclusive on the question of conduct amounting to a disciplinary offence by a public officer.

After having given full consideration to the respective submissions made by both learned counsel and to the various authorities cited by them, and bearing in mind, in particular, the provisions of Article 125 of the Constitution and the system of criminal justice prevailing in Cyprus, and also in view of the fact that the matter has not, as yet, been regulated by legislation as it should have been, I am of the opinion that it is right and proper that the Commission, while being entitled to accept and act upon the findings made in criminal proceedings, it should, nevertheless, be open to the Commission to investigate the matter itself in those exceptional and proper cases where the Commission felt that the better discharge of its duties under the Constitution required it so to do. I, therefore, see no reason for departing from the opinion expressed by the Supreme Constitutional Court on this point in *Morsis and The Republic* (*supra*, at p. 137).

This might be a convenient place in my judgment to emphasize what I have already intimated earlier herein, namely, that the enactment of organic legislation regulating, *inter alia*, the practice and procedure generally of the Commission, and in particular the procedure to be followed by it when holding inquiries into the commission of disciplinary offences by public officers (including such matters as the power to summon witnesses and to hear evidence on oath, etc.), is long overdue, and, that it is most unfortunate that such legislation is still non existent. I need hardly observe that such organic legislation should really have been brought into force almost simultaneously with the establishment of the Commission itself in 1960. I am fully conscious of the unsatisfactory position which has been created by the continued absence of such legislation and I agree with the observations made by my learned brother Judges regarding this unsatisfactory position. I would not for one moment suggest that the decision of the Supreme Constitutional Court in *Morsis and The Republic (supra)* on this point is a complete and satisfactory substitute for comprehensive legislation on this important subject (and I do not believe that it purports to be so), nor, in my view, can a complex matter such as this

be extensively and satisfactorily covered by the short statement of a fundamental principle in judicial proceedings. The object of the decision in *Morsis and The Republic (supra)* was, in my view, *inter alia*, to enable the Commission to continue to discharge its Constitutional duties, notwithstanding the absence, and pending the enactment, of comprehensive legislation on the subject. If, as would appear to be the case here, the Republic is not satisfied with the *modus vivendi* in question laid down in *Morsis and The Republic (supra)* and with the unsatisfactory situation created by the absence of such comprehensive legislation on the subject, then it would seem to me that the effective and conclusive remedy, in this instance, would appear to lie not so much in endeavouring to bring about a judicial reversal or modification of the principle in question laid down in *Morsis and The Republic (supra)* but in the enactment of the long overdue comprehensive organic legislation, the absence of which has really been at the root of the trouble in this and many other cases before the Court not only prior to, but also since, the case of *Morsis and The Republic (supra)*.

Having come to the conclusion that it is open to the Commission, in cases where it considers it proper so to do, to conduct its own inquiry into the question of whether or not the public officer, who has already been convicted of a criminal offence, has or has not also committed a disciplinary offence, I must now consider whether it was proper for the Commission, in the circumstances and on the facts of this particular Case, to decide to conduct such an inquiry and not to accept, on this occasion, for the purposes of disciplinary proceedings, the findings made in the criminal proceedings. The Judge dealt with this point in the following passage of his judgment (at p. 37 of the record):—

> "In my opinion, moreover, it was properly and reasonably open to the Commission in the circumstances of this Case to decide to examine itself the facts and circumstances which led to Applicant's conviction. In this respect it must be borne in mind that the Commission had before it a letter by counsel for Applicant containing full argumentation why he should not have been convicted and mentioning, also, a new factor (*vide* paragraph 7 of *exhibit 4*) which was not before the trial Court at the material time. It had also before it the even decision on appeal concerning the validity of the

conviction, as well as the subsequent remission of the sentence of Applicant; such remission could not have been, and was not, indeed, recommended by the Attorney-General because he had considered that the sentence was excessive—especially since such sentence had been increased as a result of an appeal made by him against the original sentence imposed by the trial Court—but it was recommended because of factors relating to the conviction of the Applicant".

Having regard to the fact that of the two counts on which the Applicant was originally tried by the criminal court in question, he was acquitted on the one count (on the ground, *inter alia*, that the criminal court did not rely on the evidence of Keravnos, the very man whom the criminal court found had given the bribe in respect of the other count of which the Applicant was convicted); having regard also to the fact that on appeal to the High Court the four judges of that Court were evenly divided as regards the validity of the conviction of the Applicant on the one and only count on which he had been convicted and that his appeal was, in the result, dismissed by the casting vote of the President of the High Court; having regard further to the fact that Applicant was released from prison on the 15th May, 1964 and the unserved balance of his sentence of imprisonment of one year (which had been substituted by the High Court on appeal for the fine of £50 which had originally been imposed on the Applicant) had been remitted, and generally having regard to the circumstances of this Case and upon perusal of the judgment of the District Court trying the criminal offence in question and the judgments of the members of the High Court on appeal, I agree with the conclusion reached by the Judge that "it was properly and reasonably open to the Commission in the circumstances of this case to decide to examine itself the facts and circumstances which led to Applicant's conviction".

Coming now to Issues Nos. *(i)* and *(iii)* which have been argued by counsel for the Commission and referred to earlier in this judgment, I cannot accept his submission that the Judge did not appreciate the precise nature of the proceedings before the Commission or that the Commission did not in fact embark upon an inquiry of its own into the matter but that it was merely considering the question of the punishment which was to be imposed on the Applicant as a result

of his conviction for a criminal offence. In this connection I agree with the conclusion reached by the Judge in his judgment (at p. 37 of the record) "that the Commission was, in effect, conducting an inquiry of its own into the facts relating to the guilt or innocence of Applicant", for the reasons which he gives at pp. 36-37 of the record, and which need not be repeated again here. Here again, counsel for the Commission has not shown cause, to my satisfaction, why I should differ from those reasons or from the conclusion which is based on them.

Having been satisfied that the Commission did in fact proceed to conduct an inquiry of its own into the facts relating to the guilt or innocence of the Applicant, I must now consider Issue No. (iv) which was argued by counsel in this appeal, namely, whether the inquiry conducted by the Commission was properly conducted in accordance with the accepted principles of natural justice and of administrative law generally. The Judge came to the conclusion (at page 39 of the record) "that the inquiry embarked upon by the Commission has not been pursued to its necessary and proper conclusion, and, therefore, that the resulting administrative decision to dismiss Applicant is defective in that one of the essential steps necessary for its validity i.e. the *proper ascertainment* of the correct facts, and consequently of the question concerning the guilt or innocence of Applicant, has not been properly taken (*vide Photiades and The Republic*, 1964 C.L.R. 102)". The Judge went on to hold (at p.39) that—

> "In effect, the Commission has omitted, in reaching its decision, to pay due regard to a very relevant consideration viz. to see the demeanour of the said Keravnos and, therefore, the exercise of its discretion in the matter has been fatally vitiated thereby".

I have given this matter careful consideration and, having examined the reasons given by the Judge for coming to this conclusion, I have not been persuaded by counsel for the Commission that such reasons were not sound and I can myself see no reason for differing from them.

In the result, I am satisfied that the Judge could properly come to the decision which he did on the material before him, namely, to declare, for the reasons given by him in his judgment, "that the dismissal of Applicant is *null* and *void* as having been decided in a defective manner and without due

regard having been paid to a material consideration and under a misdirection as to the onus of proof", and that the decision in question of the Commission was "reached contrary to law i.e. the properly applicable principles of administrative law and in abuse of the powers of the Commission".

For the reasons given above I am also of the opinion that this appeal cannot succeed and that it should be dismissed.

With regard to the cross-appeal of the Applicant, dealing first with the second ground thereof (namely that the Judge had erred in deciding that the Commission was not bound in the circumstances of the present case to inform the Applicant of his right to be represented by counsel before it on the 19th June, 1964), in view of the conclusion which I have reached in this judgment on the appeal itself (which would result in the case being reconsidered by the Commission after holding a proper and complete inquiry into the matter), I do not think that it is necessary for me to deal further with this ground of the cross-appeal. I would merely observe, however, that I think it was perhaps unfortunate that the Commission, which was aware that the Applicant had placed the whole matter in the hands of his lawyers, did not expressly ask the Applicant, if only as a matter of prudence, when the Applicant appeared before the Commission on the 19th June, 1964, whether the Applicant wished his counsel to be present. On the other hand, I would point out, in fairness to the Commission, that in the lengthy document of the 30th January, 1964 *(exhibit 4)* which counsel for Applicant had submitted to the Commission, no specific request, as such, is made by counsel for Applicant to be present when the matter was dealt with by the Commission and that it is merely stated in paragraph 10 thereof, in polite terminology, that counsel for Applicant was at the disposal of the Commission for any additional explanation or clarification which the Commission may need and that he was ready to appear before the Commission for the purpose "should you (the Commission) so wish".

As to the first ground of the cross-appeal, which concerns the issue of the competence and composition of the Commission and complains that the Judge had erred in not deciding this issue, I am of the opinion that as this issue has not been decided by the Judge in the first instance, it would not be proper for this Appellate Court to decide the issue in the

first instance itself. In my view the Judge was right in leaving the issue open in view of the conclusion which he had reached concerning the validity of the decision of the Commission in question and in view of the results which would follow upon the declaration made by the Judge. As I have agreed with such declaration and, likewise, having regard to the results which would follow upon such declaration and the fact that the issue was left open and not decided by the Judge, I am of opinion that this issue which has been raised as the first ground of the cross-appeal should not be adjudicated upon, in the first instance, by this Appellate Court.

In the result I am of the view that the cross-appeal should also be dismissed therein.

JOSEPHIDES, J.: By a letter dated the 10th July, 1964 the appellant Public Service Commission (to which I shall refer in this judgment as "the Commission") communicated to the respondent public officer (to whom I shall refer as "the public officer") their decision dismissing him from the Public Service with effect from the date of his conviction of official corruption, namely, the 15th October, 1963.

The public officer filed a recourse under the provisions of Article 146 of the Constitution seeking a declaration that the decision of the Commission was *null* and *void*, and a Judge of this Court, sitting in original jurisdiction, declared such decision *null* and *void*. The declaration which the Judge made was that "the dismissal of Applicant is *null* and *void* as having been decided in a defective manner and without due regard having been paid to a material consideration and under a misdirection as to the onus of proof; it is thus also a decision reached contrary to law, i.e. the properly applicable principles of administrative law, and in abuse of powers of the Commission".

The Commission appealed to the Full Court against that judgment on a number of grounds and the public officer cross-appealed, but the main questions which fall to be determined at this stage are:

(1) Was the Commission bound by the findings of fact made by a criminal court of competent jurisdiction, as being conclusive evidence of the facts found; and

(2) Assuming that the Commission was not bound by

such findings, was their decision either *(a)* "contrary to any of the provisions of the Constitution or of any law" (Article 146.1), or *(b)* was it made "in abuse of powers" *(ibid)*?

The relevant statutory provision laying down the powers and duties of the Public Service Commission is Article 125 of the Constitution; and this appeal turns mainly on the construction of paragraph 1, of Article 125, which reads as follows:

> "1. Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers".

It will thus be seen that it is "the duty of the Public Service Commission to.....appoint.....promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers". Although those powers and duties are made "subject to the provisions of any law" no such law has so far been enacted by the House of Representatives.

Before proceeding to consider the questions raised in this appeal, it is, I think, necessary to give a statement of the facts concerning the conviction and dismissal of the public officer.

The public officer was appointed as a driving examiner on the 1st January, 1958 and in the summer of 1963 he was still holding that appointment. On the 22nd August, 1963 five charges of official corruption, under section 100*(a)* of the Criminal Code, Cap. 154, were filed against him before the District Court of Nicosia in Criminal Case No. 13305/63. The first three charges concerned offences of corruption in the months of March and April 1961, September-October 1961 and on the 1st June, 1963. The fourth count charged the public officer with corruptly receiving on the 3rd July, 1963, the sum of £2 from one Stelios Keravnos "on account of the fact that he, the accused, in the discharge of the duties of his office had passed at a driving test one Andreas De-

mosthenous of Galata who was a student of the said Stelios Keravnos"; and the fifth and final count charged the accused that on the 10th August, 1963 he did corruptly received the sum of £8 from the same person in the discharge of his duties of office (full particulars are given below).

The public officer pleaded not guilty to all counts and on the first day of the trial, before a District Judge of the District Court of Nicosia, on the application of the prosecution and with the consent of the defence, it was directed that the accused be tried separately first on counts 4 and 5 and then on counts 1, 2 and 3. Thereupon the trial proceeded on counts 4 and 5.

After hearing six witnesses for the prosecution, including the said Stelios Keravnos, and five witnesses for the defence, including the accused public officer, the trial Judge acquitted the accused on the fourth count but convicted him on the fifth count. The full particulars of the fifth count read as follows:

> "The accused on the 10th August, 1963, at Nicosia, in the District of Nicosia being employed in the Public Service and being charged with the performance of the duty of the Driving Examiner, by virtue of such employment, did corruptly receive from one Stelios KERAVNOS of Nicosia the sum of £8.- on account of the fact that he, the accused in the discharge of his duties of office, had passed one Andreas Neophitou of Prodromos on 31.7.63, one Andreas Constantinou of Lapithos on 8.8.63 and one Solon Petrou of Arkaki on 10.8.63, in their driving test who were students of the said Stelios KERAVNOS".

Section 100*(a)* of the Criminal Code provides that a person found guilty of official corruption "is liable to imprisonment for three years, and also to a fine". The accused was sentenced to pay a fine of £50, or in default to six months' imprisonment.

In respect of the *fourth* count, which concerned an offence on the 3rd *July*, 1963, the trial Judge acquitted the accused public officer on the ground that the only evidence against him was that of Keravnos who was, in respect of that offence, undoubtedly an accomplice and there was no corroboration of his evidence. As regards the fifth count, which charged

an offence on the *10th August, 1963*, the trial Judge found that there was sufficient evidence in law to convict the accused and he did so; but I shall revert to that matter later.

The public officer appealed against his conviction and the Attorney-General of the Republic appealed against the sentence imposed on the public officer on the ground that it was "manifestly insufficient in view of the nature and gravity of the offence". The appeals (Nos. 2680 and 2681) were heard and determined by the High Court of the Republic, composed under the provisions of Articles 153(1) and 163(3) of the Constitution, on the 12th December, 1963. The President of the Court and one of the Judges were of opinion that there was ample evidence in law to support the conviction and, by a majority of votes (Article 153, paragraph 1(1)), they dismissed the appeal. The other two Judges were of opinion that the conviction should be set aside. The appeal against sentence was allowed without dissent and the public officer was sentenced to one year's imprisonment as from the 12th December, 1963.

One of the Judges who dissented in the appeal against conviction was of the view that the trial Judge applied a wrong standard of proof, that is, that he acted on the preponderance of evidence instead of proof beyond reasonable doubt; and the other Judge was of the view that the trial Judge, having acquitted the accused on the fourth count (as he was not prepared to act on the uncorroborated evidence of the accomplice), misdirected himself in convicting the accused on the fifth count. On the other hand, the President of the Court and the Judge who concurred with him in dismissing the appeal were of the view that in the case of the fifth count Keravnos was not an accomplice in strict law but a police spy and that as a matter of law his evidence with regard to that count, which charged him with committing the offence on the *10th August, 1963*, did not require corroboration; because (unlike the *fourth* count which charged an offence on the 3rd July, 1963) there was evidence from an Inspector of Police (witness No. 4)—which was accepted by the trial Judge—who stated that on that very same day (10th August, 1963), in accordance with a prearranged plan, he gave to Keravnos twenty £1 currency notes, that he kept a note of the serial number of such notes and photographed them before doing so, and that eight £1 notes out of those twenty pound-notes were eventually found by the police in the possession

of the accused on his arrest on the same day. In those circumstances, in strict law, Keravnos was not an accomplice but a police spy to detect the accused, acting under the instructions of, and in cooperation with, the police (see *R.* v. *Bickley* (1909) 2 Cr. App. Rep. 53; and the case quoted therein, *Reg.* v. *Mullins* (1848) 3 Cox's Criminal Law Cases 526, at pages 531 and 532). Nevertheless the trial Judge looked for corroboration and found such corroboration of the evidence of Keravnos in respect of the fifth count (which did not exist in the case of the fourth count) and convicted him accordingly. The appeal against conviction was consequently dismissed.

On the 4th January, 1964 the Commission sent a letter to the public officer referring to his conviction and informing him that they had "decided that you should be asked to show cause why you should not be dismissed from the Service on account of your conviction. I am, accordingly, to request you to show cause as aforesaid not later than the 18th January, 1964".

On the 11th January, 1964 Messrs. Pavlides and Triantafyllides, advocates, instructed by the public officer, addressed a letter to the Commission asking them for more time to enable them to put their client's case before the Commission fully, and an extension was granted until the 31st January, 1964. On the 30th January, 1964 Mr. Stelios Pavlides, advocate for the Public Officer, submitted to the Commission a document consisting of 5 1/2 typed pages setting out at length the reasons why the public officer should not be dismissed and stating that he (counsel) was at the disposal of the Commission "for any additional explanation or clarification you may need and I am also ready to appear before you for the purpose should you so wish".

In the opening paragraph of his defence to the Commission the public officer's counsel referred to the decision of the Supreme Constitutional Court in the case of *Morsis* and *The Republic (Public Service Commission)* (decided in February, 1963, and reported in 4 R.S.C.C. 133) and pointed out that the Commission "although entitled, is not bound to accept the facts as found by the trial Court". Basing himself on that proposition counsel submitted that "on the very special facts and circumstances of this case (as set out in his letter) the Commission is fully entitled not to accept the facts as

found by the trial Court and to act on its own free judgment in the matter".

The public officer's counsel further—

(a) submitted that the facts as found by the trial Court should *not* be accepted by the Commission;

(b) submitted that the judgments of the two Judges who were of the view that the appeal should be allowed and the conviction quashed were the right conclusions from the facts of the case;

(c) enclosed copy of the criminal proceedings before the trial Judge, including the evidence and judgment, with a request that the Commission should consider these together with the judgments of the High Court on appeal before reaching their conclusion;

(d) submitted that Keravnos was an "agent provocateur of the Police" (paras. 3*(b)* and 4 of the defence) and that he was a "wholly unreliable individual";

(e) commented in detail on the sworn evidence given at the criminal trial;

(f) submitted that the trial Judge in the criminal case applied the wrong standard of proof, that is, that he decided the case on the preponderance of evidence instead of requiring proof beyond reasonable doubt;

(g) finally submitted that the Commission should uphold the innocence of the public officer.

Pausing there it is, I think, significant to observe that the public officer's learned counsel—

(i) submitted that Keravnos was an "agent provocateur of the police" and *not* an accomplice; and

(ii) he did not ask the Commission to hold a *viva voce* inquiry or to hear or rehear *oral* evidence, nor did he tender any witnesses to be heard orally by the Commission.

On the 11th May, 1964 the Attorney-General of the Republic recommended to the President of the Republic that the balance of the sentence of imprisonment be remitted and that the public officer be released on the 15th May, 1964. This was approved and the officer was accordingly released.

In his recommendation the Attorney-General referred to the majority judgments of the High Court of Justice on appeal and to the dissenting judgments and, after stating that he was of the view that Keravnos was an accomplice in the commission of the offence, concluded as follows:— "For this reason I suggest that, taking into consideration the judicial disagreement in this matter, the fact that he has already undergone five months' imprisonment and *the consequences which the conviction will have on his career*, he should be released from prison on the 15th May, 1964". (The underlining is mine).

The question whether Keravnos was an accomplice or a police spy was dealt with earlier in this judgment (at pages 4, 5 and 6)* and I do not think that it is necessary for us to consider it further for the purposes of the present appeal.

On the 19th May, 1964 the public officer's counsel wrote a letter to the Commission inviting their attention to the release from prison of his client as from the 15th May, and reiterating his previous submissions to the Commission in a summary form.

On the 10th June, 1964, the Commission, as stated in their minutes *(exhibit 11)*, "after examining carefully the explanations given by this officer's advocates decided that Mr. Mozoras be informed that the Commission contemplates his dismissal from the Service, and that he should be asked to appear before the Commission on the 19th June, 1964, at 9.30 a.m. in order to give reasons that he should not be dismissed".

On the 11th June, 1964, the Commission addressed a letter to the public officer informing him that the Commission were contemplating his dismissal from the service on the ground that— "on the 15th October, 1963, you were convicted by the District Court, Nicosia, on a charge of official corruption and that on appeal you were sentenced to one year's imprisonment.

"The Commission will consider this matter on the 19th June, 1964, at 9.30 a.m. and you are requested to appear before the Commission on the day and time aforesaid in order to give reasons why you should not be dismissed".

*Pages 4, 5 and 6 of the original Judgment of Mr. Justice Josephides are now reported ante, at pp. 394-396.

The public officer appeared before the Commission on the 19th June, 1964 and the minutes of the Commission show that the Chairman explained to him why he was before the Commission and asked him to give his reasons why he should not be dismissed. The public officer then made a long *unsworn* statement, which was recorded in the minutes of the Commission, reiterating what he had already stated before the Criminal Court on oath. At the end of his statement he said: "I do not intend to call any witnesses". The minutes also show that the public officer answered questions put to him by two Members of the Commission regarding certain allegations made by him in his statement concerning mainly Keravnos.

On the 7th July, 1964, according to its minutes, the Commission "after considering carefully the statement of Mr. Mozoras made before the Commission on 19.6.64 and the decision of the trial court and that of the Court of Appeal decided to accept these decisions as proper and correct decisions. In the opinion of the Commission the fact that the Attorney-General of the Republic by his letter of 11.5.64 recommended to His Beatitude the President the remission of Mr. Mozoras' imprisonment cannot affect Mr. Mozoras' disciplinary liability, especially having regard to the last sentence of the Attorney-General's letter referred to above which reads as follows: 'For this reason I suggest that, taking into account.....the consequences which the conviction will have on his career.....' This officer is holding a post which is the lowest in the Driving Examiners' grade. The Commission decided that he be dismissed from the Service as from the date of his conviction, *viz.* w.e.f. 15.10.63".

Finally, on the 10th July, 1964 the Commission sent to the public officer the letter of dismissal which is the subject of these proceedings. The material part of that letter reads as follows:

".....after considering the facts and circumstances which led to your conviction and also your own statement made before the Commission on the 19th June, 1964, the Commission decided to accept the facts of the case as found by the trial Court and Court of Appeal as correct. The Commission decided that you should be and you are hereby dismissed from the Service as from the date of your conviction, viz. with effect from 15.10.63".

Question 1: Having dealt with the facts of the case at some length, I now turn to the first question which we have to decide, that is to say, whether the Commission was bound by the findings of fact made by the criminal court as being conclusive evidence of the facts found. The Supreme Constitutional Court in the *Morsis* case *(supra)* 4 R.S.C.C. 133, at page 137 held that:

"The Court is of the opinion that the Commission was entitled, though not also bound, to accept as correct the relevant facts as established to the satisfaction of the criminal court concerned and so long as the Applicant has been given an opportunity to be heard in relation to such facts before the said court he need not have been afforded a similar opportunity before the Commission".

In deciding this question it is, I think, also necessary to decide whether we are prepared to accept the decision in the *Morsis* case or overrule it. In fact, counsel for the Commission submitted that that case should be overruled.

As pointed out in the opening paragraphs of this judgment, the whole case turns on the construction which may be placed on Article 125.1 of our Constitution. Under that paragraph it is the duty of the Public Service Commission to "retire and exercise disciplinary control over, including dismissal or removal from office, of public officers". The question which arises for consideration is, in the absence of any express statutory provision, laying down the procedure to be followed, the rules of evidence to be applied, or conferring any powers on the Commission, what is the proper course to be followed by the Commission in carrying out that duty? As held in previous cases, the Commission in exercising disciplinary control has to comply with certain well-established principles of natural justice and the accepted procedure governing the dismissal of public officers *(Andreas A. Marcoullides* and *The Republic* (Public Service Commission), 3 R.S.C.C. 30 at page 35).

Now, what are the rules or principles of natural justice? The two essential elements of natural justice are in modern times usually expressed as follows:

(a) no man shall be judge in his own cause; and

(b) both sides shall be heard, or *audi alteram partem.*

Other principles which have been stated to constitute elements of natural justice, e.g. that the parties must have due notice of when the tribunal will proceed, etc., may be said to be merely extensions or refinements of the two main principles stated above.

According to Professor B. Schwartz in his book entitled "French Administrative Law and the Common Law World" (1954), at page 207, the British Courts have endeavoured to ensure administrative fair play through the concept of natural justice. The principles of natural justice can be said to be as much a part of British administrative law as the procedural demands that the United States Supreme Court has held are required of the American administration under the "due-process" clause.

In dealing with a statute prescribing that the particular decision should be made "after due inquiry" (see later in this judgment), Lord Justice Bowen said in *Leason* v. *General Council of Medical Education* [1889] 43 Ch. D. 366, at page 383, "The statute says nothing more but in saying so much it certainly imports that the substantial elements of natural justice must be found to have been present at the inquiry. The accused person must have notice of what he is accused. He must have an opportunity of being heard, and the decision must be honestly arrived at after he has had a full opportunity of being heard".

Throughout the web of our system of administration of justice in Cyprus (if I may borrow the happy phrase of Lord Chancellor Sanky in another context in the *Woolmington* case) one golden thread is always to be seen, that is to say, that a person is entitled to a fair hearing, which means that he must be informed of the accusation made against him and given an opportunity of being heard before judgment is passed on him. These principles are now enshrined in our Constitution, Articles 12.5 and 30 reproducing the provisions of Article 6 of the Rome Convention on Human Rights of 1950. As was very aptly said in Dr. Bentley's Case (1723), 1 Stra.557: "Even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' says God, 'where art thou? Hast thou not eaten of the tree that thou shouldst not eat?'" There is, however, no obligation on the part of a body carrying out an inquiry, unless a statute so provides, that a hearing should be oral *(Local*

Government Board v. *Arlidge* [1915] A.C. 120). Even in a court of law evidence may in proper circumstances be given by affidavit.

Lord Haldane, L.C. in *Local Government Board* v. *Arlidge (supra)* at page 132 said:

> "....when the duty of deciding an appeal is imposed those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a court of law, tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration rather than to the exercise of the judicial functions of an ordinary court to authorities whose functions are administrative and not in the ordinary sense judicial".

And Lord Parmoor, at page 140, said:

> "Where, however, the question of the propriety of procedure is raised in a hearing before some tribunal other than a court of law there is no obligation to adopt the regular forms of judicial procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice. In determining whether the principles of substantial justice have been complied with in matters of procedure regard must necessarily be had to the nature of the issue to be determined and the constitution of the tribunal".

It will thus be seen that in applying the rules of natural justice there is no obligation on the tribunal to adopt the regular forms of judicial procedure; it is sufficient if the hearing is made in accordance with the principles of substantial justice, and the duty is discharged by hearing evidence *viva voce* or otherwise (see *General Medical Council* v. *Spack-*

man [1943] 2 All E.R. 337, per Viscount Simon L.C. at page 340. In short, it is not required of a tribunal to conduct itself as a court or to conduct a trial. Provided they act in good faith, they can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view (per Lord Loreburn L.C., in *Board of Education* v. *Rice* [1911] A.C.179 at page 182).

At a later stage I shall consider the case of the *General Medical Council* v. *Spackman* [1943] 2 All E.R. 337.

As observed by Professor Schwartz *(supra)*, at page 207, the procedural starting point of the droit administratif in France was the principle that the administration was held to observance of only those procedural requirements that were imposed by some legal text. The Conseil d'Etat would annul administrative action for procedural defects only if the agency concerned failed to follow a procedure demanded expressly by statute or regulation. The British experience shows, however, that the courts can impose upon the administration the fundamentals of fair procedure, even in the absence of a judicially enforceable constitutional provision like the American due-process clause. And since 1944 the Conseil d'Etat has, in one of the most significant changes in its jurisprudence that has ever occurred, imported into the droit administratif something very much like the British concept of natural justice. This change in the attitude of the French Tribunal was clearly shown for the first time in the case of the widow Trompier-Gravier decided by the Conseil d'Etat on the 5th May, 1944. In that case the administration had summarily revoked the petitioner's permit to operate a stand from which she sold papers on one of the main Parisian boulevards. There was no requirement imposed by statute or regulation for notice and hearing in such a case. But, nevertheless, it was held by the Conseil d'Etat in that case that the person concerned should be given notice and enabled to present her defence. It should, however, be added that under the provisions of a Statute of 1905 in disciplinary matters against civil servants, a hearing was required as the statute gave the civil servant the right to be informed of the case against him.

It will thus be seen that by the Trompier-Gravier decision

the Conseil d'Etat in France has given the right to the individual to be heard by the administration even though not expressly provided for by the legislature, and that by this decision the French Tribunal has imported into the droit administratif something very much like the concept of natural justice as understood and applied in Britain. In both countries the courts have acted without the aid of an express constitutional provision such as the due-process clause in American constitutions.

The House of Lords decision in the case of the *General Medical Council* v. *Spackman* [1943] 2 All E.R. 337, was strongly relied upon by counsel for the public officer in the present case, as showing that, in the absence of express statutory provision, a disciplinary tribunal is not bound by the findings of fact made by a criminal court. It is, therefore, necessary to consider the *Spackman* case in some detail. In that case the House of Lords were considering the decision of the General Medical Council whereby, acting under the provisions of section 29 of the Medical Act, 1858, they directed the Registrar to erase the name of a medical practitioner from the register.

Section 29 reads as follows:

> "If any registered medical practitioner shall be convicted in England or Ireland of any felony or misdemeanour, or in Scotland of any crime or offence, or shall after due inquiry be judged by the general council to have been guilty of infamous conduct in any professional respect, the general council may, if they see fit, direct the registrar to erase the name of such medical practitioner from the register".

The General Medical Council relied on a finding of adultery made against the medical practitioner by the Divorce Court and they refused to hear evidence tendered by the medical practitioner which, though available, was not called in the divorce proceedings. The House of Lords held that the refusal to hear the fresh evidence prevented their being the due inquiry required by section 29 of the Medical Act, 1858, and granted an order of certiorari. The House based its decision mainly on the construction of section 29 of the 1858 Act, emphasising that, since in the first part of the section a judgment of the court is made final and conclusive in criminal cases, it follows that a decision of the court in

other cases must only be *prima facie* evidence which may be contradicted by further evidence. Their Lordships stressed the point that the council are in no sense a court of appeal, and that the proceedings before them are not an appeal from any court which may have dealt with the facts, but are, in fact, proceedings between different parties. There can be no suggestion of estoppel or appeal and the statutory duty of the council is to hold a "due inquiry" which necessarily involves the hearing of any relevant evidence *tendered* by the parties. That evidence may include a decision of the High Court in England, but the decision is only *prima facie* evidence and it has been laid down in the Medical Act 1858, section 29, that such a decision, except in criminal cases is not conclusive and that the council is to hold a "due inquiry" into the matter.

As Mackinnon L.J. held in the Court of Appeal in the *Spackman* case, [1942] 2 All E.R. 150, at pages 152-3:

" 'Due inquiry', however, does involve at least a full and fair consideration of any evidence that the accused desires to offer, and, *if he tenders them*, hearing his witnesses". (The underlining is mine).

In construing section 29 of the Medical Act, 1858, in the *Spackman* case in the House of Lords, Viscount Simon, L.C. [1943] 2 All E.R., at page 339, said:

> "That section draws a significant distinction between a case in which the impeached practitioner has been *convicted* of felony or misdemeanour, and a case in which the allegation of infamous conduct is not connected with a criminal conviction. In the former case the decision of the Council is properly based on the fact of the *conviction*, and the practitioner cannot go behind it and endeavour to show that he was innocent of the charge and should have been acquitted. In the latter case, the decision of the council, if adverse to the practitioner, must be arrived at 'after due inquiry', and this, of course, means after due inquiry by the council. The question, therefore, is whether the council in this case can be regarded as having reached its adverse decision after due inquiry' when it has *refused to hear evidence tendered by the practitioner* with a view to showing that he has not been guilty of the infamous conduct alleged and that the finding of the Divorce Court against him as co-

respondent is wrong".

Further down Viscount Simon, L.C. says (at page 340):

> "The decree of the Divorce Court provides a strong *prima facie* case which throws a heavy burden on him who seeks to deny the charge, but the charge is not irrebuttable (340).....Unless Parliament otherwise enacts, the duty of considering the defence of a party accused, before pronouncing the accused to be rightly adjudged guilty, rests upon any tribunal, whether strictly judicial or not, which is given the duty of investigating his behaviour and taking disciplinary action against him. The form in which this duty is discharged—e.g. whether by hearing evidence *viva voce* or otherwise—is for the rules of the tribunal to decide. What matters is that the accused should not be condemned without being first given a fair chance of exculpation".

And at pages 340-1 Viscount Simon, L.C., after quoting with approval the dictum of Lord Loreburn, L.C. in *Board of Education* v. *Rice* [1911] A.C. 179 at page 182, referred to earlier in this judgment, said:

> "In weighing the value of rebutting evidence produced before it, the council is entitled to bear in mind that *it is not given on oath*, although (in a case like the present) it might have been brought forward under oath at the trial, and that the council cannot compel the attendance of other witnesses which might refute it. The council is further entitled to attach to the conclusion of the Divorce Court all the weight that is due to the effect upon a trained judicial specialist of sworn testimony given, subject to cross-examination, before a tribunal which can compel attendance of witnesses and production of documents. But all this does not exonerate the council from *refusing to allow the accused* to put before it relevant matter in support of his denial". (All the underlining in these extracts is mine).

Lord Atkin, at page 341, said:

> "It is plain that the statute throws upon the council and on the council alone the duty of holding due inquiry and of judging guilt. They cannot, therefore, rely upon inquiry by another tribunal or a judgment of guilt by another tribunal. The practitioner charged is en-

titled to a judgment the result of the considered deliberation of his fellow practitioners. They must, therefore, hear him and all relevant witnesses and other evidence *that he may wish to adduce before them.* It is not disputed that, where there has been a trial, at least before a High Court judge, the notes of the evidence at such trial and the judgment of the judge may afford *prima facie* evidence in support of the charge: for the council are not obliged to hear evidence on oath. But the very conception of *prima facie* evidence involves the opportunity of controverting it: and I entertain no doubt that the council are bound, *if requested, to hear all the evidence that the practitioner charged brings before them* to refute the *prima facie* case made from the previous trial".

Finally, Lord Wright, at pages 345-6 said:

> "It can only be in comparatively rare cases that the cause of complaint is a matter which has been decided in a court of law other than by a conviction for felony or misdemeanour. The court decision should indeed ease that duty, because the proceedings and judgment of the court at least give the council *prima facie* evidence which may be for practical purposes unanswerable by the practitioner. But he must surely be entitled to deny the charge before the council and *bring his evidence* if he contests the justness of the decision of the Court" (per Lord Wright at page 346).

The above dicta are significant as they throw considerable light on the principles and procedure which have to be followed by disciplinary tribunals, and I need not attempt to summarise them.

It is interesting to observe that in 1956 Parliament in the United Kingdom, by the provisions of section 33(2) of the Medical Act, 1956, reversed the effect of the decision in the *Spackman* case by enacting that in an inquiry under section 29, where a person has been guilty of infamous conduct in any professional respect, any finding of fact which is shown to have been made in any matrimonial proceedings in the High Court in the United Kingdom, or on appeal from a decision in such proceedings, shall be conclusive evidence of the fact found.

Having dwelt at some length on the principles of natural justice I now revert to the construction of our Article 125.1, that is to say, whether in carrying out their inquiry under the principles of natural justice the Commission is bound by the findings of fact found by a criminal court. The conclusion in the *Spackman* case *(supra)* is not really applicable on this point as the House of Lords in that case were construing the provisions of a statute which laid down expressly that the finding of a criminal court was conclusive. Having regard to the provisions of Article 146 of our Constitution, which introduced in this country the droit administratif, in construing our Article 125 it would, I think be helpful to look to other legal systems which apply the principles of administrative law to see what are the principles applicable there apart from statute.

In Greece it was held by the Council of State in 1929, in Case No. 125/1929, that when a criminal court within its competence finds on the basis of legal evidence that a public officer is guilty of an offence it is incumbent on the administration to respect this finding in the exercise of disciplinary authority and to accept as true what has been decided by the criminal court, maintaining only its independence in the exercise of its discretion whether it would be expedient to impose a disciplinary punishment or not. In that case the disciplinary tribunal held that it was not possible for it to dispute the decision of the criminal court and it, consequently, accepted all the facts on which the decision was based. The Council of State in deciding the case stated that, although it is true that the disciplinary competence is exercised independently of the criminal jurisdiction as seeking different objectives, nevertheless the disciplinary tribunal is bound by the finding of fact of the criminal court; and the Council expressed the view that the criminal trial provides more safeguards for the accused than the disciplinary proceedings.

This decision was followed in a number of cases, including Cases No. 1/1937 and 381/1939 of the Council of State. The principles stated above were laid down by the Council of State in Greece in 1929, long before the enactment of the Public Service Code in 1951 (Law No. 1811 of 1951), which now expressly provides that the findings of fact of a criminal court are binding on the disciplinary tribunal (Article 138, paragraph 3). Reference should also be made to the "Conclusions of Decisions of the Council of State, 1929 to 1959"

at page 364; M. Stasinopoulos' Administrative Law Lessons (1957), pages 401-402; Professor Kyriakopoulos' Greek Administrative Law, 4th edition, Volume 1, pages 172-3; Prof. Kyriakopoulos' Law of Civil Administrative Servants (1954), pages 251-2.

Extracts from the three cases of the Greek Council of State quoted above, as well as from the other authorities are given below:*

'Αριθ. 125 (1929)

Τὸ Συμβούλιον τῆς 'Επικρατείας
Τμῆμα Α'

«.....'Ιδὸν τὰ σχετικὰ

Σκεφθὲν κατὰ τὸν Νόμον

'Επειδὴ ἡ προσβαλλομένη ἀπόφασις τοῦ Συμβουλίου Οἰκον. 'Υπηρεσίας περιέχει τὴν αἰτιολογίαν, ὅτι 'δὲν δύναται νὰ θέσῃ ὑπὸ ἀμφισβήτησιν τὴν ἀπόφασιν τοῦ ποιν. δικαστηρίου' καὶ ἀποδέχεται 'κατὰ συνέπειαν ὅλα τὰ στοιχεῖα, ἐφ' ὧν αὕτη ἐστηρίχθη'.

'Επειδὴ ὀρθῶς ἐν τούτῳ ἔκρινε τὸ μνησθὲν Συμβούλιον καὶ ἐδέχθη ἀσυμβίβαστον πρὸς τὰ καθήκοντα τοῦ δημοσίου ὑπαλλήλου συμπεριφοράν, ἐπὶ τῇ βάσει μόνης τῆς ἀνωτέρω ποινικῆς ἀποφάσεως.

'Αληθῶς μὲν ἡ πειθαρχικὴ δικαιοδοσία ἀσκεῖται αὐτοτελῶς καὶ ἀνεξαρτήτως τῆς ποινικῆς, ὡς διώκουσα σκοποὺς διαφόρους, ἀλλ' ὅταν, ὡς ἐν προκειμένῃ, τὸ ποινικὸν δικαστήριον, ἐν τῇ ἁρμοδιότητί του, καὶ δὴ ἐν διαδικασία παρεχούσῃ μείζονας ἐγγυήσεις, δέχεται ἐπὶ τῇ βάσει νομίμων ἀποδείξεων, ὅτι ἔλαβε χώραν ὡρισμένον ἀδίκημα καὶ τὴν εἰς τοῦτο ἐνοχὴν τοῦ ὑπαλλήλου, ἐπιβάλλεται καὶ εἰς τὴν διοίκησιν νὰ σεβασθῇ τὸ δεδικασμένον ἐν τῇ ἀσκήσει τῆς πειθαρχικῆς ἐξουσίας καὶ νὰ δεχθῇ ὡς ἀληθὲς τὸ ὑπὸ τοῦ ποινικοῦ δικαστηρίου ἀποφασισθέν, διατηροῦσα μόνον αὐτοτέλειαν ἐν τῇ κρίσει περὶ τοῦ σκοπίμου τῆς ἐπιβολῆς πειθαρχικῆς ποινῆς».

(ΑΠΟΦΑΣΕΙΣ ΣΥΜΒΟΥΛΙΟΥ ΕΠΙΚΡΑΤΕΙΑΣ, 1929 σελ. 196-197).

**Note* An English translation of these extracts is to be found at the end of the judgments, at p. 422 et seq.

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'Αριθ. 1/1937

Τὸ Συμβούλιον τῆς 'Επικρατείας (Τμῆμα Α'.)

«'Ιδὸν τὰ σχετικὰ
Σκεφθὲν κατὰ τὸν Νόμον

'Επειδὴ ὁ προσφεύγων διὰ τῆς ὑπ' ἀριθ. 6/1936 ἀποφάσεως τῶν ἐν Σύρῳ 'Εφετῶν ἐκηρύχθη ἔνοχος παραβάσεως καθηκόντων συνισταμένας εἰς τὸ ὅτι ἀποθηκάριος ὢν τοῦ Τελωνείου Σύρου ἐξ ὀλιγωρίας, ἀμελείας καὶ κουφότητος παρέλειπε τὸν τακτικὸν καὶ ἀνελλιπῆ, ὡς ἐκ καθηκόντων του εἶχεν ὑποχρέωσιν, ἔλεγχον ἐν ταῖς ἀποθήκαις τοῦ Τελωνείου Σύρου περὶ τῆς ὑπάρξεως τῶν ἐν αὐτῇ κατεσχημένων ἀντικειμένων ἐξ οὗ ἠδύνατο νὰ προληφθῇ ἡ λαβοῦσα χώραν λάθρᾳ ἐξαγωγὴ ὡρισμένων ἐξ αὐτῶν, ἀφοῦ δὲ τὰ αὐτὰ πραγματικὰ περιστατικὰ ἀποτελοῦσι καὶ τὴν βάσιν τῆς ἐπακολουθησάσης κατ' αὐτοῦ πειθαρχικῆς ἀγωγῆς ἐφ' ἧ ἐπεβλήθη αὐτῷ ἡ εἰρημένη πειθαρχικὴ ποινή, δὲν ὑφίσταται στάδιον πρὸς ἔρευναν περὶ τῆς τελέσεως ἢ μὴ τῆς καταλογισθείσης αὐτῷ πράξεως δεδομένου ὅτι ἐκ τῆς εἰρημένης ἀποφάσεως τοῦ ἁρμοδίου ποινικοῦ δικαστηρίου προκύπτει δεδικασμένον περὶ τῆς ὑπάρξεως ἁπάντων τῶν στοιχείων τῶν συνιστώντων τὸ εἰς τὸν προσφεύγοντα καταλογισθὲν πειθαρχικὸν παράπτωμα. Τὴν ἐπιβληθεῖσαν ὅμως τῷ προσφεύγοντι πειθαρχικὴν ποινὴν τοῦ ὑποβιβασμοῦ τὸ Συμβούλιον τοῦτο, λαμβάνον ὑπ' ὄψιν αὐτοῦ τὴν ὑπὸ τῆς ἁρμοδίας ὑπηρεσίας ἀναγνωριζομένην ἀπόλυτον ἐντιμότητα καὶ *πλήρη ὑπηρεσιακὴν ἐπάρκειάν του καὶ τὴν μακρὰν καὶ εὐδόκιμον* ὑπηρεσίαν του, κρίνει δυσανάλογον πρὸς τὸ διαπραχθὲν ὑπ' αὐτοῦ πειθαρχικὸν παράπτωμα καὶ μὴ ἀνταποκρινομένην πρὸς τὴν διὰ τῆς προσβαλλομένης ἀποφάσεως ἐμμέσως πλὴν σαφῶς ἀναγνωριζομένην ἐπάρκειάν του πρὸς ἄσκησιν τῶν καθηκόντων τοῦ βαθμοῦ του, καὶ περιοριστέαν εἰς τὴν τῆς τριμήνου προσωρινῆς ἀπολύσεως».

(ΑΠΟΦΑΣΕΙΣ ΣΥΜΒΟΥΛΙΟΥ ΕΠΙΚΡΑΤΕΙΑΣ, 1937, Α1, σελ.4-5).

'Αριθ. 381/1939.

Τὸ Συμβούλιον τῆς 'Επικρατείας
Τμῆμα Α!

«'Επειδὴ ὁ προσφεύγων πρὶν ἢ ἐκδοθῇ κατ' αὐτοῦ ἡ προσβαλλομένη πειθαρχικὴ ἀπόφασις, παραπεμφθεὶς ἐνώπιον τοῦ τριμελοῦς ἐν Θεσσαλονίκῃ Πλημμελειοδικείου, ἐκηρύχθη διὰ τῆς ὑπ' ἀριθ. 2414/1938 ἀποφάσεως τοῦ εἰρημένου ποινικοῦ δικαστηρίου 'ἀθῶος τοῦ ὅτι..... β) *κατὰ τὴν 14ην 'Ιουλίου 1938 ἄνευ προη-*

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γουμένης ἐκπληρώσεως τῶν νομίμων διατυπώσεων καὶ πληρωμῶν ἐντὸς τοῦ δημοσίου καπνεργοστασίου κατεῖχε 55 κυτία σιγαρέττων τῶν 25 γραμμαρίων ἐκ κεκομμένου καπνοῦ.....'.

'Επειδὴ εἶναι μὲν ἀληθὲς ὅτι ἐξ ἀπαλλακτικῶν ἀποφάσεων ποινικῶν δικαστηρίων δὲν δεσμεύεται ἡ Διοίκησις νὰ ἀσκήσῃ πειθαρχικὸν ἔλεγχον τοῦ κατηγορηθέντος δημοσίου ὑπαλλήλου καὶ ὅτι τὸ πειθαρχικὸν δικαστήριον δὲν κωλύεται νὰ τιμωρήσῃ αὐτὸν διὰ τὰς αὐτὰς κατηγορίας κατ' ἰδίαν ἐκτίμησιν καὶ κρίσιν ἀπὸ διοικητικῆς ἀπόψεως τῶν ὑπ' ὄψιν αὐτοῦ τιθεμένων στοιχείων, ἐφ' ὅσον ὅμως ὁ ποινικὸς δικαστὴς δέχεται τὴν ὕπαρξιν ὡρισμένων γεγονότων ἢ ἀντιθέτως ἀποφαίνεται, ὅτι δὲν ὑφίστανται ἀντικειμενικῶς ὡρισμένα περιστατικά, ὁ πειθαρχικὸς δικαστὴς ὀφείλει νὰ δεχθῇ τοῦτο ὡς βεβαιωμένον ἐκ τοῦ δεδικασμένου ὅπερ προκύπτει ἐκ τῆς ποινικῆς ἀποφάσεως καὶ νὰ κρίνῃ μόνον ἐὰν καὶ κατὰ πόσον τὰ οὕτω τεθέντα περιστατικὰ ἀποτελοῦσιν ἢ ὄχι πειθαρχικὸν παράπτωμα.

'Επειδὴ κατὰ ταῦτα, ἐφ' ὅσον διὰ τοῦ σαφῶς διατυπωμένου διατακτικοῦ τῆς προμνησθείσης ἀποφάσεως τοῦ ποινικοῦ δικαστηρίου, ὁ προσφεύγων ἐκηρύχθη ἀθῶος τοῦ ὅτι κατὰ τὴν 14ην 'Ιουλίου 1938 κατεῖχε 55 κυτία σιγαρέττων ἄνευ προηγουμένης ἐκπληρώσεως τῶν νομίμων διατυπώσεων καὶ πληρωμῶν, δὲν ἠδύνατο πλέον τὸ πειθαρχικὸν συμβούλιον, κρίνον περὶ τοῦ πραγματικοῦ τούτου γεγονότος ἀντιθέτως πρὸς τὴν ἀπόφασιν τοῦ ποινικοῦ δικαστηρίου, νὰ ἐπιβάλῃ εἰς τὸν προσφεύγοντα πειθαρχικὴν ποινὴν ἐπὶ παραπτώματι ὅπερ κατὰ τὸ ἐκ τῆς ἀποφάσεως τοῦ ποινικοῦ δικαστηρίου προκύπτον δεδικασμένον δὲν ἔλαβε κατὰ τὸν ἐν τῇ ἀποφάσει ταύτῃ ἀναφερόμενον τόπον καὶ χρόνον (14 'Ιουλίου 1938) χώραν.

'Επειδὴ κατὰ ταῦτα ἀκυρωτέα διὰ τὸν ἀνωτέρω λόγον ἀποβαίνει ἡ προσβαλλομένη ἀπόφασις».

(ΑΠΟΦΑΣΕΙΣ ΣΥΜΒΟΥΛΙΟΥ ΕΠΙΚΡΑΤΕΙΑΣ, 1939, Α, σελίς 523—4)

«'Οσον ἀφορᾷ τὴν ἐπίδρασιν ἣν ἀσκεῖ ἐπὶ τῆς πειθαρχικῆς δίκης τὸ δεδικασμένον ἐκ ποινικῶν ἀποφάσεων, τὸ Συμβούλιον τῆς 'Επικρατείας ἔκρινεν ὅτι ἐφ' ὅσον ὁ ποινικὸς δικαστής, περιβαλλόμενος ὑπὸ πλειόνων ἐγγυήσεων ἢ ὁ πειθαρχικός, ἐδέχθη τὴν ὕπαρξιν ἢ ἀνυπαρξίαν ὡρισμένων πραγματικῶν περιστατικῶν, ὁ πειθαρχικὸς δικαστὴς ὀφείλει νὰ δεχθῇ τὴν τοιαύτην κρίσιν ὅσον ἀφορᾷ τὸ ἀντικειμενικῶς ὑπόστατον τῶν περιστατικῶν τούτων, χωρὶς ὅμως νὰ δεσμεύηται ὅπως ὑπαγάγῃ ἢ μὴ ὑπαγάγῃ

τὰ αὐτὰ περιστατικὰ εἰς τὴν ἔννοιαν τοῦ πειθαρχικοῦ ἀδικήματος: 125 (29), 1066 (37), 2388 (53), 1654 (57). (Ταῦτα ἀποτελοῦν πλέον καὶ θετικὸν δίκαιον δυνάμει τοῦ ἄρθρου 138 παρ. 3 τοῦ Ὑπαλ. Κώδικος)».

(ΠΟΡΙΣΜΑΤΑ ΝΟΜΟΛΟΓΙΑΣ ΣΥΜΒΟΥΛΙΟΥ ΕΠΙΚΡΑΤΕΙΑΣ, 1929 ΕΩΣ 1959). (σελ. 364).

«γ) Ἐὰν ἐξεδόθη ἡ ποινικὴ ἀπόφασις, ἐρωτᾶται, κατὰ πόσον αὕτη δεσμεύει τὸ πειθαρχικὸν ὄργανον:

1) Ἡ νομολογία ἐδέχετο ὅτι ἡ ἐν τῇ ἀποφάσει τοῦ ποινικοῦ δικαίου ἐνυπάρχουσα διαπίστωσις τῶν πραγματικῶν περιστατικῶν δεσμεύει τὸ πειθαρχικὸν ὄργανον, τὴν ἀρχὴν δὲ ταύτην καθιεροῖ ἤδη ρητῶς καὶ ὁ Υ.Κ. Ἐὰν ὁ καταγγελθεὶς διότι ἔκλεψεν ἠθωώθη ἀπὸ τὸ ποινικὸν δικαστήριον, δὲν δύναται νὰ τιμωρηθῇ πειθαρχικῶς ἐπὶ κλοπῇ. Καὶ τἀνάπαλιν, ὁ καταδικασθεὶς ἐπὶ κλοπῇ δὲν δύναται νὰ θεωρηθῇ ἀπὸ τὸ πειθαρχικὸν ὄργανον ὡς μὴ κλέψας. Διὰ τῆς ὑπ' ἀριθμ. 381 (1939) ἀποφ. Σ.Ε. ἠκυρώθη ἡ ἀπόλυσις ὑπαλλήλου Ἐφορίας καπνοῦ, ἥτις εἶχεν ἐπιβληθῇ ἕνεκα τοῦ παραπτώματος λαθρεμπορίας καπνοῦ, ἐνῷ ὁ ὑπάλληλος οὗτος εἶχε κηρυχθῇ ἀθῷος τῆς πράξεως ταύτης, διὰ τῆς ἀποφάσεως τοῦ ποινικοῦ δικαστηρίου. Ἡ ἀκύρωσις ἐγένετο, διότι ἐκρίθη ὅτι τὸ πειθαρχικὸν ὄργανον ἐδεσμεύετο ἐκ τῆς ἀθῳωτικῆς ἀποφάσεως τοῦ ποινικοῦ δικαστηρίου καὶ δὲν ἠδύνατο νὰ ἐπιβάλῃ ἀπόλυσιν ἐπὶ λαθρεμπορίᾳ, ἀφοῦ διὰ τὴν πρᾶξιν ταύτην εἶχεν ὁ ὑπάλληλος ἀθῳωθῇ.

Ἐν συμπεράσματι, ἡ ποινικὴ ἀπόφασις δεσμεύει τὸ πειθαρχικὸν ὄργανον μόνον ὡς πρὸς τὴν ἐ ξ α κ ρ ί β ω σ ι ν τῶν πραγματικῶν περιστατικῶν, οὐχὶ δὲ καὶ ὡς πρὸς τοὺς χαρακτηρισμοὺς αὐτῶν ἢ ὡς πρὸς τὰ συμπεράσματά της περὶ τοῦ ἂν ὁ κατηγορούμενος εἶναι ἢ οὐ ἀπαλλακτέος».

(Μ. ΣΤΑΣΙΝΟΠΟΥΛΟΥ, ΜΑΘΗΜΑΤΑ ΔΙΟΙΚΗΤΙΚΟΥ ΔΙΚΑΙΟΥ, ΑΘΗΝΑΙ 1957) (σελ.401—402).

«Οὕτω δὲ τὸ ὑπὸ τῆς ποινικῆς ἀποφάσεως προκῦπτον δεδικασμένον δεσμεύει τὴν κρίσιν τοῦ πειθαρχικοῦ δικαστοῦ ὡς πρὸς τὴν ὕπαρξιν ἢ ἀνυπαρξίαν πραγματικοῦ τινος γεγονότος. Ἡ τοιαύτη ἀρχὴ δικαιολογεῖται ἐκ τοῦ ὅτι ἡ ποινικὴ δικαιοσύνη καὶ λόγῳ συγκροτήσεως αὐτῆς καὶ λόγῳ τῆς διεπούσης αὐτὴν δικονομίας θεωρεῖται ὡς δυναμένη ἀσφαλέστερον νὰ κρίνῃ περὶ τῆς τελέσεως ἢ οὐ τῆς ἀποδιδομένης εἰς τὸν ὑπάλληλον πράξεως καὶ τῶν πραγματικῶν ὅρων, ὑφ' οὓς ἡ βεβαιωθεῖσα πρᾶξις ἐτελέσθη.

'Εφ' ὅσον δὲ ὁ ποινικὸς δικαστὴς ἀνεζήτησε τὴν ἀντικειμενικῶς ὑφισταμένην ἀλήθειαν, τὸ ἀποτέλεσμα τῆς ποινικῆς δίκης δέον νὰ ἔχηται ἀντὶ ἀληθείας, τοῦθ' ὅπερ ἐπιβάλλει τὴν ἐνότητα ἐν τῇ ἀπονομῇ τῆς δικαιοσύνης. Τὴν ἐνότητα ταύτην ἠθέλησε νὰ διασφαλίσῃ καὶ ὁ ΚΔΔΥ. διὰ τῆς ὡς εἴρηται διατάξεως».

(ΗΛΙΑ Γ. ΚΥΡΙΑΚΟΠΟΥΛΟΥ - ΔΙΚΑΙΟΝ ΤΩΝ ΠΟΛΙΤΙΚΩΝ ΔΙΟΙΚΗΤΙΚΩΝ ΥΠΑΛΛΗΛΩΝ (1954), σελ. 251—252).

It would seem that the same principles are accepted in France as, according to Conseiller Odent in his book "Contentieux Administratif", volume 3, page 940, the decisions given by a criminal court have the absolute authority of *res judicata* ("de la chose jugée"). "This comprises only the findings made by the criminal judge with regard to the existence of the imputed facts, the juridical qualification that he gives to those facts and the guilt or innocence of the person to whom those facts are attributed". These rules apply to a conviction by a criminal court: see the decisions of the Conseil d'Etat in France in the case of "*Sieur Chomat*", dated 11th May, 1956, and that of "*Sieur Ranaivo*", dated 8th April, 1959. According to the latter case the judgment of the criminal court has the authority of *res judicata* ("chose jugée") and it is binding on the administrative authority to the extent that it decides on the material existence or inexistence of the facts imputed.

In the case of "*Claude Durant*", Nos. 214 and 219 of 1956, it was decided that the ascertainment of the material existence of facts binds the Administration which can rely on such existence in order to impose a sanction but cannot, on the other hand, act contrary to such *res judicata* (chose jugée) of the criminal court by denying the material existence of the facts.

As regards the position in Italy it would appear that the same principles are applicable. Once certain facts have been ascertained by a decision of a criminal court (including an acquittal), the Administration can legitimately take the disciplinary measure of dismissal on the strength of those facts without further inquiry: see "Massimario della Giurisprudenza del Consiglio di Stato, 1932-1962" paragraph 357, decision dated 7th November, 1958. It has also been held that the facts found by the criminal court cannot in the disciplinary proceedings form the subject of new inquiries

directed towards excluding their existence: see decision dated 13th June, 1961, in the "*Massimario*" *(supra)*, paragraph 331.

The legal position in Greece and other countries was conceded by the public officer's counsel but he contended that the system of criminal justice in those countries provided more safeguards and was different from that obtaining in the criminal courts in Cyprus. If anything, our system of criminal justice is stricter as regards proof against an accused person and—without in any way wishing to belittle other legal systems—I think that it can be safely said that in our system there are more safeguards for the accused than in Continental countries. To mention one or two instances: hearsay evidence is excluded under our rules of evidence while in Greece it is not (see Article 224 of the Greek Criminal Procedure Code, Law No. 14-93 of 1950); and judges in Greece are not bound by any "legal canons of proof" («νομικοὺς κανόνας ἀποδείξεως») but they have to be guided by the "voice of their conscience" («τὴν φωνὴν τῆς συνειδήσεώς των»): see Article 177 of the Greek Criminal Procedure Code. In this connection it should also be borne in mind that the very wide powers conferred on the Supreme Court of the Republic on appeal from criminal courts, including Assize Courts, under the provisions of section 25(3) of our Courts of Justice Law, 1960, provide additional safeguards for accused persons.

Another argument advanced in favour of the view that the Commission should not be bound by the findings of fact of a criminal court was that the position in Cyprus was different from Continental countries, as the civil courts here are not bound by the findings of fact made by criminal courts. But the reason for that, as explained in *Hollington* v. *Hewthorn & Co. Ltd.* [1943] 2 All E.R. 35, C.A., is that a conviction is not admissible in civil proceedings because it is not relevant. As stated by Goddard, L.J. at page 39: "However, nowadays, it is relevance and not competency that is the main consideration; and, generally speaking, all evidence that is relevant to an issue is admissible, while all that is irrelevant is excluded. Is it then relevant to an issue whether the defendant by negligent driving collided with and thereby injured the plaintiff to prove that he had been convicted of driving without due care and attention on the occasion that the plaintiff was injured?".....
"It frequently happens that a bystander has a complete and

full view of an accident; it is beyond question that while he may inform the court of everything that he saw, he may not express any opinion on whether either or both of the parties were negligent. The reason commonly assigned is that this is the precise question the court has to decide; but in truth it is because his opinion is not relevant. Any fact that he can prove is relevant; but his opinion is not. The well-recognised exception in the case of scientific or expert witnesses depends on considerations which, for present purposes, are immaterial. So, on the trial of the issue in the civil court, the opinion of the criminal court is equally irrelevant"..... "indeed, it is relevancy that lies at the root of the objection to the admissibility of the evidence". (page 40).

Goddard, L.J. further stressed the point that there is no more reason why the decision of a criminal court, whether a court of summary jurisdiction or assizes, should be considered of greater evidential value than one given in a court exercising civil jurisdiction (at page 43 of the above Report). This is also applicable to Cyprus, as a civil court in our judicial system is, like a criminal court, one of the organs exercising judicial power in the Republic under the Supreme Court (see Articles 152 and 158 of the Constitution); and all courts are bound by the law and rules of evidence and procedure which provide great safeguards for any person tried by them. Civil and criminal courts in the judicial system in force in Cyprus are courts of law of equal status and comparable powers within their respective jurisdictions. While in the case of the Public Service Commission that body is not a court of law, and the aforesaid rule of evidence regarding admissibility based on relevance does not apply to its proceedings; in fact, the Commission is not bound by any law or rules of evidence.

Undoubtedly we are not bound by any Greek, French, Italian or any other Continental authority, but in formulating our own principles of administrative law we are prepared to look for guidance to these authorities and, in the absence of any statutory provision in Cyprus, to adopt them provided we agree with the reasoning behind them.

Relying on the reasoning in the decision of the Greek Council of State in case No.125/1929 (quoted above),* and having regard to the other French and Italian authorities,

*Ante at p. 408.

I have formed the view that, in the absence of any express statutory provision to the contrary, Article 125.1 of our Constitution should be construed in such a way that the Public Service Commission should be bound by the findings of fact made by a criminal court of competent jurisdiction, save in very exceptional circumstances, e.g. where fresh evidence is tendered to the Commission; but certainly not in cases where the same evidence, which was heard by the criminal court, is called by the public officer before the Commission. Because in that case, I think that it would be against public policy for the Commission to hear the same witnesses all over again, without the safeguards as to composition, procedure and powers of criminal courts, e.g. sworn testimony subject to cross-examination, exclusion of hearsay evidence, proof beyond reasonable doubt, compulsion of witnesses to appear and answer questions put to them, trial by trained judicial specialist, etc., and to be free to make a finding contrary to the verdict of a criminal court, either of a Judge sitting alone or an Assize Court, which verdict had been upheld on appeal by the Supreme Court. This would be contrary to the public interest as it would shake the confidence of the public in the courts and thus undermine the administration of justice in the Republic, and it would also be likely to lead to impossible situations; e.g. while a public officer would be serving a term of, say, five years' imprisonment, having been convicted of a felony by an Assize Court, the Public Service Commission, being dissatisfied with the credibility of the witnesses who testified also before the Court, might find him not guilty of the felonious act of which he was convicted by the Court. In that case he would be unable to perform his duties as a public officer during the term of his imprisonment. I do not think that the framers of the Constitution ever intended such a result.

Considering the safeguards as to composition, procedure rules of evidence and powers of criminal courts, I am of the view that such courts are in a better position to decide finally and conclusively as to the guilt or innocence of a public officer; and this would serve to preserve unity in the administration of justice. For these reasons I would hold that the Public Service Commission in the exercise of its disciplinary competence under Article 125.1 should be bound by the findings of fact made by a criminal court as being conclusive evidence of the facts found, save in very exceptional

circumstances, e.g. where fresh evidence is tendered to the Commission. It, therefore, follows that I would, with respect, overrule the decision in the *Morsis* case.

Question 2: I now turn to question 2, that is, assuming that on the authority of the *Morsis* case the Commission was entitled, though not also bound, to accept as correct the facts as found by the criminal court, is the decision of the Commission either—*(a)* "contrary to any of the provisions of the Constitution or of any law", or *(b)* was it made "in abuse of powers" (Article 146.1)?

As already stated it was the duty of the Commission to comply with the principles of natural justice which I have quoted earlier. Now, did they comply with those principles or not? The learned Judge who heard this case in the first instance was of the view that the inquiry by the Commission into the facts of the case was not carried out properly and that the Commission ought to have called before it as a witness Stelios Keravnos. The learned Judge was further of the view that the Commission also failed in their duty in placing the burden of proof on the public officer having regard to the wording used in their letters to him. Let us consider what the Commission in fact did.

They sent him a notice (dated 4th January, 1964) referring to his conviction for bribery and asked him to show cause why he should not be dismissed from the Service on account of that conviction; that is to say, they informed the public officer of the accusation made against him and of the *prima facie* evidence against him, namely, his conviction, and they gave him an opportunity of defending himself.

Some 26 days later learned counsel for the public officer submitted to the Commission his defence of 5 1/2 pages, setting out at length the reasons why the public officer should not be dismissed. This document is summarized and commented upon earlier in this judgment. Counsel also submitted copies of the charges, sworn evidence at the trial and judgment of the criminal court, and asked the Commission to consider all these together with the judgments of the High Court on appeal before reaching their conclusion. He did not, however, ask the Commission to hold a *viva voce* inquiry or to hear or rehear oral evidence, nor did he tender any witness to be heard orally by the Commission.

Following this the Commission gave the public officer another opportunity of defending himself. He appeared before them in person, he did not ask to be represented by counsel and he made an unsworn statement, re-iterating his sworn testimony before the criminal court; and he then informed the Commission that he did not wish to call any witnesses. All the other facts are given in the first part of this judgment.

The net result is that when the Commission came to consider their decision they had before them the following evidence:

(a) the charges preferred against the public officer in the criminal court;

(b) the sworn evidence given at the trial, with cross-examination and re-examination, of six witnesses for the prosecution, including Keravnos, and five witnesses for the defence, including the public officer;

(c) the reasoned judgment of the trial Judge in the criminal case;

(d) the reasoned judgments of the four Judges of the High Court who heard the case on appeal;

(e) the recommendation of the learned Attorney-General of the Republic to the President of the Republic for partial remission of sentence;

(f) the elaborate defence in writing submitted to the Commission by eminent counsel on behalf of the public officer (attaching documents *(a)*, *(b)* and *(c)* above);

(g) the full oral statement made by the public officer on the facts of the case before the Commission; and

(h) the statement of the public officer that he did not wish to call any other witnesses.

After giving full consideration to the matter the Commission found the facts in accordance with the finding of the criminal court and the Court of Appeal and they decided that the public officer should be dismissed from the service.

As already observed, when quoting the principles of natural justice earlier in this judgment, there is ample authority

that the inquiry to be carried out by the Commission need not be an inquiry following the same procedure as in a court of law and that evidence does not mean only oral evidence. They may receive written evidence or the sworn evidence already taken before the criminal court and, on the authority of the *Spackman* case, the decree of the Divorce Court provides a strong *prima facie* evidence which throws a heavy burden on him who seeks to deny the charge, but it is not irrebuttable. By analogy the same principle applies to a conviction by a criminal court in Cyprus, if not held to be conclusive evidence.

In these circumstances did the Commission fail in their duty? Did they fail to observe any of the well-established principles of natural justice? Did they fail to give the public officer a fair hearing? Did they refuse to hear any evidence tendered by him? The answer to all these questions is, to my mind, in the negative. Was it then necessary to hear the evidence of Keravnos as well? Be it noted the unsworn evidence of Keravnos whose attendance, in fact, the Commission had no statutory power to compel; and whom, even if they did manage to persuade him to attend, they did not have the power to compel to answer questions?

In the circumstances of this case and considering that the Commission had before them his sworn testimony—which had been subjected to cross-examination—before the criminal court, I do not think that the Commission failed in their duty in not calling themselves Keravnos to give oral evidence before them, which would not be on oath, having regard also to the fact that even the public officer himself did not request them to hear such evidence. It would be different if the Commission had heard the oral evidence of Keravnos and had refused to hear the oral evidence of the public officer, although the Supreme Constitutional Court in the *Morsis* case (at page 137) held that "so long as the Applicant" has been given an opportunity to be heard in relation to such facts before the (criminal) court he need not have been afforded a similar opportunity before the "Commission". As it were, the public officer was at an advantage as he was given the last word, that is, he was afforded the opportunity when he appeared personally before the Commission of controverting the *prima facie* evidence against him, namely, the sworn evidence at the criminal trial and the judgments of the trial court and the Court of Appeal.

In all the circumstances of the case I am of the view that the Commission gave a fair hearing to the public officer, that they observed all the principles of natural justice and that it cannot be said that their decision is either contrary to any of the provisions of the Constitution or of any law or was made in abuse of powers. I would, therefore, uphold their decision and set aside the declaration that the dismissal of the public officer is *null* and *void.*

One of the grounds raised in the public officer's cross-appeal was that he was not given sufficient notice and that his counsel was not notified directly by the Public Service Commission. This contention was rejected by the Judge in the first instance and I agree that, considering the facts, there is no substance in this ground.

In conclusion, considering the principles involved in this case, which are of far-reaching importance both to public officers and the Public Service Commission, which is a body set up under the Constitution, I wish to make these observations. However one looks at this case, the situation as regards the way that the powers and duties of the Commission in disciplinary matters should be exercised is unsatisfactory, because it lacks that certainty which is considered necessary in such matters. To my mind it is a matter of urgency that consideration should be given to the enactment of a Law, as provided in Article 125.1, regulating the procedure to be followed and the principles to be applied by the Commission in disciplinary inquiries, including the question of convictions as conclusive evidence. This would bring the question of the conclusiveness of convictions into line with the principles applicable by disciplinary councils of professional bodies, such as advocates (section 17 of the Advocates Law, Cap. 2, as amended), medical practitioners (section 12 of the Medical Registration Law, Cap. 250, as amended), dentists (section 14 of the Dentists Registration Law, Cap. 249, as amended) and architects (section 12 of Law 41 of 1962). In this connection see also regulations 27 and 28 of the Broadcasting Corporation (Conditions of Service) Regulations, 1966, which were recently published in the Official Gazette (Supplement 3, of the 7th April, 1966, Notification 166, page 211).

It is, I feel, unfair on the members of the Public Service Commission to be expected to grope their way through the

maze of legal concepts and principles applicable by other countries without a clear-cut code of procedure and principles. The enactment of the proposed Law would, undoubtedly, help to dispel the present confusion and bring about an appreciable reduction in litigation over these matters with consequential saving of public time and money.

ZEKIA, P.: Two are the main issues involved in this case. The one is whether the Public Service Commission in exercising their powers and duties under Article 125.1, in this particular case, exceeded or abused such powers. The second issue which incidentally arises from the first, is how far the Public Service Commission is bound by the findings of fact on which a conviction was arrived at by a competent criminal court.

The Commission had to deal with the case of a public servant who has been found guilty of official corruption by a competent criminal court, which conviction was upheld by the Court of Appeal.

The Public Service Commission invited the public officer involved to show cause why he should not be dismissed from the service. The officer submitted in writing a long document for his defence prepared by a counsel and also presented himself at the meeting held by the Public Service Commission and orally explained matters relating to his defence as he alleged that he was innocent of the offence he has been convicted. He did not request for a chance to be given to him to appear before the Commission with a counsel, or to fetch any witness or produce any documentary evidence for his defence. The Commission after considering the case, directed the dismissal from the Service of the public officer in question.

In the absence of any special enactment governing the procedure to be followed by the Public Service Commission when functioning under Article 125.1 of the Constitution, the Commission had to be guided by the principles of natural justice. It does not appear to me that in this particular case any of the rules of natural justice have been violated.

As to the second issue incidentally raised, namely, whether the Public Service Commission is bound by findings of fact on which a conviction is based by a competent criminal court; respondent relying on *Morsis*' case, argued that the Com-

mission was not bound by such findings which constitute the elements of the offence. Strictly speaking, this point need not necessarily be decided in this case, since the Commission, acting independently on facts leading to the officer's conviction and considering itself unfettered with such findings, directed the dismissal of the officer. For future guidance, however, this point might also be considered. The main argument turned on the authority of *Morsis*. Apart from any continental and English authorities on the point there is no law here making facts, on which a conviction is based by a competent criminal court, binding on the Public Service Commission. I feel, therefore, that we are at liberty to pave our own way in this direction. In doing so, we may usefully be guided by foreign authorities. It is of some importance to know that the Conseil d'Etat of Greece, before the enactment of any relevant law, decided in 1929 that facts on which a conviction is based by a competent criminal court, are binding on a disciplinary tribunal.

I would respectfully follow such authorities and I would say that such facts must be accepted as binding on the Commission, even if not by force of law, as a matter of established practice, unless exceptional circumstances, such as exculpatory fresh material not available before the criminal court, becomes available before the Commission.

I consider highly impracticable and undesirable for the Public Service Commission to stage a trial with a view to ascertaining facts leading to a conviction already made by a proper competent court of law. The Public Service Commission, no doubt, is fully entitled to go into the nature of the offence committed and to the surrounding circumstances with a view to finding for itself whether the offence committed involves moral turpitude and whether the conduct of the officer calls for disciplinary punishment.

The Court being equally divided in this case, the appeal will have to be dismissed.

Points raised on the cross-appeal need not be dealt with in view of the dismissal of the appeal.

Each party will bear its own costs in the appeal.

Appeal and cross-appeal dismissed. Each party to bear its own costs in the appeal.

TRANSLATION

The following provisional translation (prepared in the registry of the Supreme Court) of the extracts from the Greek authorities included in the judgment of Josephides J., at pages 408 to 412, is given below for the convenience of the profession:

Council of State—Division A
No. 125/1929.

"Whereas the decision of the Council of Economic Service which is challenged contains the reasoning, that 'it cannot dispute the decision of the criminal court' and accepts 'in consequence thereof all the facts on which it was based'.

Whereas the said Council rightly decided in this matter and found the conduct of this public servant to be inconsistent with his duties, merely on the basis of the above criminal judgment. It is true that the disciplinary competence is exercised finally and independently of the criminal jurisdiction, as seeking different objectives, but, when as in the present case, the criminal court, within its competence, and in fact in proceedings conferring more safeguards, accepts on the basis of legal evidence, that a certain offence was committed, and that the Public Servant is guilty of such an offence, it is incumbent upon the administration in the exercise of disciplinary power to respect what has already been decided and to accept as true the finding of the criminal court, retaining its independence in deciding as to whether it would be expedient to impose a disciplinary punishment".

(Decisions of the Council of State, 1929, pages 196-7).

Council of State—Division A
No. 1/1937.

"Whereas the applicant, by decision No. 6/1936 of the Judges of the Court of Appeal of Syros, was declared guilty of breach of duties in that being a storekeeper of the Customs of Syros by indifference, negligence and frivolity omitted the regular and unfailing, as he was obliged to do by virtue of his duties, checking in the stores of the Customs of Syros in relation to the existence therein of the forfeited articles, by which the secret exportation of some could have been prevented and as the same true facts form the basis of the dis-

ciplinary proceedings which followed against him, in which the said disciplinary punishment was inflicted on him, there is no room for investigation about the commission or not of the act of which he was found guilty in view of the fact that by the said judgment of the competent criminal court there results a judicial decision as to the existence of all the ingredients constituting the disciplinary offence of which the Applicant was found guilty. As regards the disciplinary punishment of demotion imposed upon the Applicant this Council, taking into consideration his absolute honesty and full efficiency of service, which is recognized by the competent authority, and his long and fruitful service, considers disproportionate to the disciplinary offence committed by him and not corresponding to his indirectly but clearly, by the challenged decision, recognized efficiency to exercise the duties of his office, and, restricted to one of three months' temporary dismissal".

(Decisions of the Council of State, 1937, A1, pp. 4-5).

Council of State—Division A
No. 381/1939

"Whereas the Applicant, before the issue against him of the challenged disciplinary judgment, having been committed before the three-membered Criminal Court of First Instance at Salonica, was declared by judgment No.2413/1938 of the said criminal Court 'innocent of that.....*(b)* about the 14th July, 1938, without the prior fulfilment of the legal formalities and payments within the public tobacco factory he was in possession of 55 packets of cigarettes of 25 grammes of cut tobacco.....'

Whereas though it is true that the Administration is not bound by acquittals of the criminal courts to take disciplinary proceedings against the accused public servant and that the disciplinary court is not prevented from punishing him for the same charges according to its own assessment and judgment, from the administrative point of view, of the facts presented to it, but in view of the fact that the criminal judge accepts the existence of certain facts, or on the contrary, it finds, that there are no in existence objectively, certain circumstances, the disciplinary judge is bound to accept it as confirmed by the judicial decision resulting from the criminal

judgment and to consider only whether such findings as stated constitute or not a disciplinary offence.

Whereas, according to these, in view of the clearly stated order of the said judgment of the criminal court, the Applicant was declared innocent of the offence that on the 14th July, 1938, he possessed 55 packets of cigarettes without the prior fulfilment of the legal formalities and payments, the disciplinary organ could not any more adjudicating on this true fact contrary to the judgment of the criminal court, impose on applicant a disciplinary punishment for an offence which, according to the judicial decision resulting from judgment of the criminal court, was not committed at the place and time stated in the said judgment (14th July, 1938).

Therefore, in view of these, the judgment complained of is declared *null* and *void* for the reasons stated above".

(Decisions of the Council of State, 1939, A, pages 523-4)

"As regards the effect of the findings in the judgments of criminal courts upon the disciplinary trial, the Council of State held that so long as the criminal judge, who is vested with more safeguards than the disciplinary judge, has accepted the existence or non-existence of certain true facts, the disciplinary judge is bound to accept such judgment as regards the objective existence of such facts, without being bound to bring them within the definition of the disciplinary offence: 125(29), 1066(37), 2388(53), 1654(57). (This forms now part of the positive law by virtue of article 138, paragraph 3 of the Public Service Code)"

("Conclusions of Decisions of the Council of State, 1929 to 1959", page 364).

"*c*) If the criminal judgment has been given, is it binding upon the disciplinary organ?:

1) It is accepted by decided cases that the finding of true facts contained in a criminal law judgment is binding upon the disciplinary organ, and the said principle is already expressly laid down in the Public Service Code. If a person accused of stealing is acquitted by the criminal court, he cannot be punished disciplinarily for stealing. And *vice*

versa a person convicted of stealing cannot be found by the disciplinary organ as not having stolen. By the decision of the Council of State No. 381 (1939) the dismissal of an officer of the Supervisory Committee of Tobacco, which was imposed for the offence of smuggling of tobacco, was annulled, while such officer was found innocent of this act, by the judgment of a criminal court. The annulment was made, because it was found that the disciplinary organ was bound by the judgment of acquittal of the criminal court and that it could not impose dismissal for smuggling, since the officer was acquitted of such an act".

. . . . . .

"In conclusion, the criminal judgment binds the disciplinary organ only as regards the ascertainment of the true facts and not as regards their description, or as regards its conclusions as to whether the accused is to be discharged or not". *(Stasinopoulos' Administrative Law Lessons* (1957), pp. 401-2).

"Therefore, the findings in the judgments of criminal courts are binding upon the judgment of the disciplinary judge so far as they relate to the existence or non-existence of a true fact. Such principle is justified by the fact that criminal justice, both in view of its composition and the procedure applicable, is considered as being in a position to decide more safely as to whether the act attributed to a public servant has been committed or not, and the true circumstances, under which the confirmed act was committed. Since the criminal judge endeavoured to ascertain the objectively existing truth, the result of the criminal trial must be accepted as being the truth, which brings about unity in the administration of justice. It is this unity that the Public Service Code intends to safeguard by the aforesaid statutory provision". *(Kyriakopoulos' Law of Civil Administrative Servants* (1954), pages 251-2).