IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANICOS ORPHANIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF INTERIOR,
2. THE COMMANDER OF THE CYPRUS POLICE,

Respondents.

(Case No. 122/66).

Disciplinary Proceedings—Rules of natural justice—Applicable also to the review procedure—Therefore, a decision of the Reviewing Authority taken in contravention of the rules of natural justice is null and void and has to be annulled—Notwithstanding that such decision was confirmed by a superior authority before which the said rules had been scrupulously observed—And it makes no difference at all that such confirmation was made on an appeal by the person aggrieved—Because an administrative decision on an administrative appeal, purporting to confirm an invalid decision, is also invalid—On the other hand, in view of the fact that in the instant case the decision of the Reviewing Authority was, independently of an appeal, subject to confirmation by the Superior Authority (viz. the Chief of Police)—The whole process from the commencement of the present proceedings before the Assistant Superintendent, followed by the review procedure before the Divisional Commander (viz. the Reviewing Authority) up to and including such confirmation by the Chief of Police—Constitutes a composite administrative action—Hence a recourse challenging that confirmation is deemed to put in issue the validity of the preceding decisions as well—See, also, herebelow.

Police—Disciplinary proceedings—The Police (Discipline) Regulations 1958 (as amended by the Police (Discipline) (Amendment) Regulations 1958) regulation 7, and paragraph 18 of the First Schedule thereto referred as 'the Discipline Code', regulations 18(1)(b) proviso, 18(4) 19(1), and 21—Rules of natural justice applicable also to the review procedure under regulation 18(4)—Inclusion of conviction for a criminal offence by a court of law in the list of disciplinary offences contained in paragraph 18 of the Discipline Code, supra*—Effect and*

meaning—Conviction deemed to be conclusive evidence of the commission of the offence to which it relates—To the same effect is now the provision in section 83(2) *of the Public Service Law,* 1967 *(Law No.* 33 *of* 1967*)—See, also, above.*

Natural Justice—Rules of natural justice applicable also to the review procedure under regulation 18(4) *of the Police (Discipline) Regulations,* 1958 *(as amended,* supra*)—See, also, above under Disciplinary Proceedings; Police.*

Composite administrative action—A recourse challenging one of the decisions constituting such composite administrative action is deemed to put in issue the validity of the preceding decisions as well—See, also, above under Disciplinary Proceedings; Police.

Administrative Law—Disciplinary proceedings—Rules of natural justice—Composite administrative action—See above.

Conviction—Conviction for a criminal offence—Included in the list of disciplinary offences contained in the Disciplinary code i.e. *First Schedule to regulation* 7 *of the Police (Discipline) Regulations* 1958 *(as amended,* supra*), paragraph* 18*—Conviction deemed to be conclusive evidence of the commission of the offence to which it relates—Cf. section* 83(2) *of the Public Service Law,* 1967 *(Law No.* 33 *of* 1967*)—See, aslo, above under Police.*

Disciplinary offences—Conviction for a criminal offence—See above.

Res judicata—Conviction for a criminal offence—Conclusive evidence in disciplinary proceedings of the commission of the offence to which such conviction relates—See above under Police; Conviction.

The Applicant, a police constable, was convicted on the 23rd November, 1965, by the District Court of Nicosia of stealing a rifle and was fined in the sum of £25. On December 17, 1965, disciplinary proceedings were brought against him under the Police (Discipline) Regulations 1958, the Applicant being charged with having been convicted as stated above, in accordance with Regulation 7 and paragraph 18 of the First Schedule thereto (that schedule being referred to as 'the Discipline Code'). The relevant part of these

provisions is quoted in the Judgment, post. The said disciplinary proceedings were conducted by Assistant Superintendent P.S. The Applicant admitted the charge. He was defended by a police inspector nominated by himself. The said Assistant Superintendent imposed a punishment of deferment of increment for two years. He not being a Divisional Commander, the case had to be and was reviewed by the Divisional Commander under Regulation 18(4) (as amended by the Police (Discipline) (Amendment) Regulations 1958), who increased the Applicant's punishment to one of dismissal from the Force. This was done in the absence of the Applicant and without his being given an opportunity of being heard. The Applicant being a constable, under a proviso to Regulation 18(1)(b) "The decision and punishment" were subject to confirmation by the Chief of Police. In addition, however the Applicant, under Regulation 19(1), had a right to appeal to that officer, which he exercised. The Chief of Police, after hearing counsel in support of the appeal and a police officer in opposition hereto, confirmed the punishment of dismissal imposed by the Divisional Commander

By the instant recourse the Applicant challenges the said decision of the Chief of Police whereby the latter has confirmed the disciplinary punishment of dismissal from the Force imposed by the Divisional Commander as aforesaid. The main ground of law in support of the recourse is as follows: The fact that the Divisional Commander reviewed the original. decision of the Assistant Superintendent *(supra)* without giving the Applicant the opportunity of being heard vitiated the dismissal decision taken by the Divisional Commander and consequently, vitiated that taken by the Chief of Police on appeal as well.

In annulling the decision complained of, the Court:-

Held, (1). Clearly the rules of natural justice are equally applicable to the review procedure and therefore the Reviewing Officer's (*i.e.* the Divisional Commander's, *supra*) decision in the instant case was invalid. (Principles laid down in *Haros* and *The Republic,* 4 R.S.C.C. 39, at p. 44, *applied*).

(2)*(a)* It follows that had the Applicant, without appealing to the Chief of Police, applied to this Court for a declaration of such invalidity he would have succeeded. The fact that he so appealed makes no difference.

(b) In my opinion the decision of the Chief of Police on the appeal purporting, as it did, to confirm an invalid decision, was also invalid (see *Annamunthodo* v *Oilfields Worker's Trade Union* [1961] 3 All E R 621, at p 625, para 2)

(c) Further in view of the fact that the decision of the Divisional Commander acting as Reviewing Officer in the matter was, independently of an appeal, subject to confirmation by the Chief of Police, the whole process from the commencement of the disciplinary proceedings up to and including such confirmation was what is known as a "composite administrative action" and hence an application attacking that confirmantion is deemed to put in issue the validity of the preceding decisions as well· See Kyriakopoulos, Greek Administrative Law Vol. 3, p.p. 98, 99, last and first paragraphs respectively, and p 308, para. 2.

(3) For the above reasons both the Chief of Police's confirmation of the Reviewing Officer's decision and the latter decision itself must be, and hereby are, annulled.

Order in terms
No order as to costs.

Per curiam: Certainly the inclusion of "conviction for a criminal offence" by a court of law in the list of disciplinary offences contained in the "Discipline Code" *(supra)* was not apt in point of draftsmanship Nevertheless the object of such inclusion is clear· To make the conviction conclusive evidence in the disciplinary proceedings of the commission of the offence to which it relates That is the effect of such a conviction in Greece (see Kyriakopoulos op cit, Vol 1, pp. 172, 173, footnote 43, and Vol 3, p 281), and in this country a statutory provision to that effect is now to be found in section 83(2) of the Public Service Law, 1967

Cases referred to·

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

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

Nicos Kalisperas and *The Republic and Another*, 3 R.S.C.C. 146 at p. 151;

Annamunthodo v. *Oilfields Worker's Trade Union* [1961] 3 All E.R. 621, at p. 625, para. 2.

Recourse.

Recourse against the decision of the Chief of Police confirming Applicant's disciplinary punishment of dismissal, from the Police force, imposed by the Divisional Commander.

A. Neokleous, for the Applicant.

M. Spanos, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

STAVRINIDES, J.: The Applicant, a young man of twenty-three or twenty-four years of age, on February 28, 1964, enlisted in the Police Force. On November 20 of that year criminal proceedings were instituted in the District Court of Nicosia against him and another person—against the latter for stealing a rifle, for receiving it and unlawful possession of it, and against the Applicant for stealing and receiving a pair of anklets and a police leather belt. Pleas of not guilty were entered on all counts. On November 23, 1965, the Applicant was found guilty on the stealing count and fined £25 with forty days' imprisonment in default. On December 17, 1965, disciplinary proceedings were brought against the Applicant under the Police (Discipline) Regulations, 1958, in the Limassol Police Division, the Applicant being charged with having been convicted by the District Court as just stated. Regulation 7 of the 1958 Regulations provides that

> "A member of the Force commits an offence against discipline (hereinafter in these Regulations referred to as 'an offence') if he commits one or more of the offences set out in the Police Law, 1958, or any Law amending or substituting (sic) for the same, or in the First Schedule hereto (hereinafter in these Regulations referred to as 'the Discipline Code')";

and paragraph 18 of the Discipline Code reads:

> "Conviction for a criminal offence, that is to say, if any member of the Force has been found guilty by a Court of Law of a criminal offence."

The proceedings were conducted by Assistant Superintendent P. Z. Stokkos (hereafter "the Presiding Officer"). The Applicant admitted the charge. The case against him was presented by a police inspector and he was defended by another police inspector nominated by himself. The Presiding Officer imposed a punishment of deferment of increment for two years. He not being a Divisional Commander, reg. 18(4) (as amended by the Police (Discipline) (Amendment) Regulations, 1958) came into play, which provides that

> "All cases in which a member of the Force has been found guilty of an offence against the Discipline Code and which have been heard by a Gazetted Officer who is not a Divisional Commander shall.... be reviewed by the Divisional Commander who, upon review, may...
>
> (b) vary the decision or (with or without varying the decision) remit, mitigate increase or alter the punishment to any other punishment which might have been imposed for the offence..."

The Divisional Commander reviewed "the case" and increased the Applicant's punishment to one of dismissal from the Force. This was done in the absence of the Applicant and without his being given an opportunity of being heard. The Applicant being a constable, under a proviso to reg. 18(1)(b) "the decision and punishment" were subject to confirmation by the Chief of Police. In addition, however, the Applicant, under reg. 19(1), had a right of appeal to that officer, which he exercised. The latter, after hearing counsel in support of the appeal and a police officer in opposition thereto, confirmed the punishment of dismissal. Finally, reg. 21 provides that

> "No decision or punishment requiring confirmation by the (Chief of Police)... shall be confirmed until the time for appeal has expired or, where there is an appeal, until the appeal has been determined."

The instant application is for a declaration

> "that the decision of the Respondents (referring to the Chief of Police's decision) confirming the disciplinary sentence imposed upon Applicant by the Divisional Commander on reviewing is *null and void* either in whole or in part and/or their decision to confirm Applicant's dismissal from the Cyprus Police Forces, made by the Divisional Commander on reviewing, is null and void and of no effect whatsoever as it is contrary to the Laws and/or the Constitution and/or has been taken in excess or in abuse of powers vested in them."

In effect counsel for the Applicant made the following points:

> 1. The Presiding Officer erred in finding the Applicant guilty of a disciplinary offence simply because he had been convicted by a court of law. The theft had to be proved in the disciplinary proceedings by sworn evidence or admission of its commission, as distinct from admission of the conviction.
>
> 2. The fact that the Divisional Commander reviewed the Presiding Officer's decision without giving the Applicant the opportunity of being heard vitiated the original dismissal decision and therefore that on the appeal as well.

Let me consider the second point first. In effect Counsel of the Republic argued that the point is not a valid one because (a) the Reviewing Officer's decision "could only be given on the basis of the record of the proceedings before the Presiding Officer" and (b) because of the right of appeal. In the case of *Haros* v. *Republic* (Minister of Interior), 4 R.S.C.C. 41, the Applicant, a police sergeant, was proceeded against for a disciplinary offence under the 1958 Regulations and found guilty, the Presiding Officer fining him £10. That punishment was confirmed by the Reviewing Officer. The sergeant appealed, and the Acting Commander (as the title then was), without giving the Appellant an opportunity of being heard, dismissed the appeal and altered the punishment to one of dismissal from the Force.

Triantafyllides, J., delivering the Judgment of the court said at p. 44:

"Concerning the allegation that the provisions of reg. 20 (which deals with the Chief of Police's powers on review and on appeal and is practically identical with reg. 18(4), neither provision making any mention of a right to be heard) are contrary to the rules of natural justice the court is of the opinion that the said rules, which also under article 12 of the Constitution are made applicable to offences in general, should be adhered to in all cases of disciplinary control in the domain of public law (vide *Andreas A. Marcoullides* v. *Republic* (Public Service Commission), 3 R.S.C.C. 30, at p. 35, *Nicos Kalisperas* v. *Republic* (*Public Service Commission*) *and Another*, 3 R.S.C.C. 146, at p. 151) and that, therefore, the provisions of reg. 20 should be applied subject to the aforesaid rules.

In view of the foregoing, it follows that the decision on appeal of the Commander, which was made without hearing the Applicant, was arrived at through a procedure contrary to the said rules, and has, therefore, to be declared to be null and void and of no effect whatsoever. It is up to the Commander now to consider again the appeal in question in the light of this judgment."

Clearly the rules of natural justice are equally applicable to the review procedure and therefore the Reviewing Officer's decision in the instant case was invalid. It follows that had the Applicant, without appealing to the Chief of Police, applied to this court for a declaration of such invalidity he would have succeeded. Does the fact that he so appealed make any difference?

In my opinion the decision on the appeal, purporting, as it did, to confirm an invalid decision, was also invalid: (see *Annamunthodo* v. *Oilfields Worker's Trade Union*, [1961] 3 All E.R. 621, at p. 625, para. 2). Further, in view of the fact that the Reviewing Officer's decision was, independently of an appeal, subject to confirmation by the Chief of Police, the whole process from the commencement of the disciplinary proceedings up to and including such confirmation was what is known as a "composite administrative action" and hence an application attacking that confirmation is deemed to put in issue the validity of the preceding decisions as well: see Kyriakopoulos, Greek Administrative Law, Vol. 3,

pp. 98, 99, last and first paragraphs respectively, and p. 308, para. 2.

I now turn to the first point, with which, having regard to the conclusion at which I have arrived on the second one, I will deal very briefly. Certainly the inclusion of "conviction for a criminal offence" by a court of law in the list of disciplinary offences contained in the Discipline Code was not apt in point of draftsmanship. Nevertheless, the object of such inclusion is clear: to make the conviction conclusive evidence in the disciplinary proceedings of the commission of the offence to which it relates. That is the effect of such a conviction in Greece (see Kyriakopoulos, op. cit., Vol. 1, pp. 172, 173, footnote 43, and Vol. 3, p. 281); and in this country a statutory provision to that effect is now to be found in s. 83(2) of the Public Service Law, 1967.

Before I conclude I must deal briefly with a matter arising out of the way the application is constituted. In the title of the proceedings the Minister of the Interior appears as one of two officers exercising administrative authority "through whom" the Republic is proceeded against. From the foregoing it is clear that the Minister had no say in, and nothing to do with, the matters which had led to these proceedings and consequently his being included in the title was misconceived. However, I do not propose making an order of dismissal in respect of him because the way the title is framed he is not really himself a party, there being only one Respondent, *viz.* the Republic.

For the above reasons both the Chief of Police's confirmation of the Reviewing Officer's decision and the latter decision itself must be, and hereby are, declared void. However, in all circumstances I make no order as to the costs.

Order in terms.

No order as to costs.