IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNA ENOTIADOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Case No* 61/69)

Collective Organ—Change of composition—Public Service Commission—Meeting for the purpose of disciplinary proceedings—Five members present—But fifth member thereof present only at commencement of proceedings—Taking no further part nor did he participate at all in the taking of the sub judice decision—Validity of proceedings and of the said decision not affected at all—Section 11(2) *of the Public Service Law,* 1967 (*Law* 33/67)—Vivardi *v* Vine Products Council (1969) 3 *C.L.R.* 486, followed

Public Officers—Disciplinary offences—Disciplinary proceedings—Evidence—Judicial control—See passim, infra.

Disciplinary offences and proceedings—Conduct of public officer antecedent to the enactment of the Public Service Law, 1967 (*Law* 33/67)—*It can be dealt with under the said Law and in accordance with the procedure prescribed thereunder—Principle* nullum delictum sine lege *not applicable to disciplinary offences and proceedings—And presumption against retrospectivity not applicable to procedural provisions—See further,* infra

Nullum delictum sine lege—*Rule of—Not applicable to disciplinary offences and proceedings—See immediately hereabove*

Evidence in disciplinary proceedings before the Public Service Commission—Evidence need not be given on oath—Disciplinary proceedings essentially are not a judicial trial but an administrative enquiry—Nothing in the said Law 33/67 *making it necessary for the Commission or even entitling it to hear evidence on oath in the course of disciplinary proceedings.*

Disciplinary conviction—Judicial control—The Administrative Court dealing with a recourse against a disciplinary conviction cannot, as a rule, interfere with the subjective evaluation of the relevant facts as made by the appropriate organ—Moreover, the conviction of the applicant in the instant case is warranted by the material before the Public Service Commission.

Judicial control of disciplinary convictions—Facts—Limits of such control—See immediately hereabove.

Disciplinary offences and punishment—General punishment (viz. *compulsory retirement*) *imposed in respect of all charges—Nothing erroneous from the point of view either of principle or of good administration in imposing in the instant case a general punishment in view of the nature of the punishment imposed* (*compulsory retirement from the service*).

Internal regulations—Prescribing proper conduct of staff of Government hostels—Need not be published in the Official Gazette.

Public Service Commission—See passim, supra.

Statutes—Presumption of non-retrospectivity not applicable to procedural provisions.

Presumption of non-retrospectivity of legislation—See immediately hereabove.

Held, I. *As regards the alleged defective composition of the respondent Commission* :

It is true that the fifth member of the respondent Commission had been present for half a day at the commencement of the examination of this disciplinary case by the Commission ; he did not take any further part whatsoever in these disciplinary proceedings. The presence of this member as aforesaid and his absence thereafter does not affect in the least the validity of the proceedings and the relevant decision. In the light of the principles laid down by this Court in, *inter alia*, the case of *Vivardi* v. *The Vine Products Council* (1969) 3 C.L.R. 486, I am of the opinion that, in view of the fact that after the change in the composition of the responden: Commission, which occurred as mentioned above, the composition of the Commission remained unchanged until the *sub judice* decision was taken, such decision was reached, in effect, by four members who had participated in the whole of the disciplinary proceedings and, therefore, there does not exist any reason for annulling the decision on the ground of defective

composition of the Commission ; it is also to be noted that under section 11(2) of the Public Service Law, 1967 (Law 33/67) the Commission could reach a decision with only four of its members present.

Held, II. *Regarding the other points raised by counsel for the applicant :*

(1)—(*a*) It was perfectly lawful for the Commission to deal with the relevant conduct of the applicant under the Public Service Law, 1967 (Law 33/67) even though such conduct was antecedent to the enactment of the said Law ; because it has been held that in relation to disciplinary matters the principle *nullum delictum sine lege* is not applicable ; see the decisions of the Greek Council of State in cases 278/1932 and 645/1935, as well as the Conclusions from the case-law of the Council of State (in Greece) 1929–1959 ("Πορίσματα Νομολογίας Συμβουλίου Ἐπικρατείας 1929–1959") p. 366.

(*b*) Furthermore, after the said Law 33/67 was enacted the procedure prescribed thereunder had to be applied even in relation to offences prior to its enactment because the presumption against retrospectivity does not apply to procedural provisions (see, *inter alia*, Maxwell on Interpretation of Statutes, 12th ed. p. 222 ; Odgers, on Construction of Deeds and Statutes, 5th ed. p. 287).

(2) Another contention of counsel for the applicant was that the evidence adduced before the Commission in relation to the disciplinary charges against the applicant was not heard on oath : There is nothing in the relevant Law (Law 33/67, *supra*) which either makes it necessary for the Commission or entitles it to hear evidence on oath in the course of disciplinary proceedings, which are, essentially, not a judicial trial but an administrative enquiry : I find, therefore, no merit in this contention of applicant's counsel.

(3) Regarding the submission that on the material before it the respondent Commission could not properly find the applicant guilty of the charges brought against her, it is well settled that an administrative Court in dealing with a recourse made against a disciplinary conviction should not, as a rule, interfere with the subjective evaluation of the relevant facts as made by the appropriate organ (see, *inter alia*, the decisions of the Greek Council of State in cases 2654/1965 and 1129/1966) ; moreover, a perusal of the reasons given for finding

the applicant guilty, including the reasoning in support of the majority and minority views in connection with the particular charge of improper behaviour with another female member of the staff, shows that the conviction of the applicant on all charges was warranted by the material before the Commission.

(4) It was also submitted by counsel for the applicant that it was not open to the Commission to impose on her a general punishment—namely, compulsory retirement from the public service—in respect of all charges. In view of the nature of such punishment obviously the applicant was considered to be totally unfit as an Assistant Superintendent of Homes. I can see, therefore, nothing erroneous from the point of view either of principle or of good administration in imposing the said punishment as a general one in respect of all the disciplinary offences concerned.

Application dismissed.
No order as to costs.

Cases referred to :

Vivardi v. *The Vine Products Council* (1969) 3 C.L.R. 486 ;

Decisions of the Greek Council of State in Cases : Nos. 278/1932, 645/1935, 2654/1965 and 1129/1966.

Cf. also cases cited in Conclusions from the Case-Law of the Council of State (in Greece) 1929–1959 ("Πορίσματα Νομολογίας τοῦ Συμβουλίου Ἐπικρατείας 1929–1959"), p. 366.

Recourse.

Recourse against the decision of the respondent to retire the applicant compulsorily from the public service on disciplinary grounds.

L. Papaphilippou, for the applicant.

S. Nicolaides, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :—

TRIANTAFYLLIDES, P. : In this recourse the applicant complains against the decision of the respondent Public Service Commission to retire her compulsorily from the public service on disciplinary grounds ; the said decision was communicated to her by letter dated the 27th January, 1969.

At the material time the applicant was holding the post of Assistant Superintendent of Homes in the Department of Welfare Services of the Ministry of Labour and Social Insurance.

The respondent reached its *sub judice* decision at its meeting of the 20th January, 1969 ; as it is stated in such decision, which is a reasoned decision and copy of which was attached to the letter addressed to the applicant on the 27th January, 1969, the applicant was found guilty of having committed the following disciplinary offences while she was employed as Assistant Superintendent at a hostel—the Girls' Welfare Centre—in Nicosia :

First, that on various occasions, while being at the hostel, she behaved in an improper manner with another female member of the staff of the hostel, in such a way as would bring the public service into disrepute and shake the confidence of the public therein, especially in view of the nature of the post held by the applicant and of the kind of institution where such behaviour took place.

Secondly, that she was evading the performance of her duties.

Thirdly, that she was behaving in a harsh manner towards the inmates of the hostel and was not co-operating with her superiors.

Fourthly, that on the 17th July, 1966, she slapped one of the inmates, contrary to the regulations governing the functioning of the hostel.

Regarding the charge that she had been behaving improperly with another female member of the staff she was found guilty by a majority of three to one ; regarding the other charges she was found guilty unanimously by four members of the Commission.

Another—the fifth—member of the Commission had been present for half a day only at the commencement of the examination of the case by the Commission ; and he did not take any further part in the disciplinary proceedings nor did he participate at all in the reaching of the *sub judice* decision. Learned counsel for the applicant has submitted that the presence as aforesaid of this member and his absence thereafter vitiated the validity of the whole disciplinary proceedings. I am of the opinion, in the light of the relevant principles as expounded by this Court in, *inter alia*, *Vivardi* v. *The Vine Products Council* (1969) 3 C.L.R. 486, that

in view of the fact that after the change in the composition of the Commission, which occurred as mentioned above, the composition of the Commission remained unchanged until the *sub judice* decision was taken, such decision was reached, in effect, by four members who had participated in the whole of the disciplinary proceedings and, therefore, there does not exist any reason for annulling the decision on the ground of defective composition of the Commission ; it is, also, to be noted that under section 11 (2) of the Public Service Law, 1967 (Law 33/67), the Commission could reach a decision with only four of its members being present.

Also, I find no merit in the contention of counsel for the applicant that the disciplinary proceedings in question are invalid because though the events to which they relate took place before the enactment of Law 33/67, the applicant was dealt with under the provisions of Law 33/67. It is correct that, originally, before the enactment of Law 33/67, the applicant had been already interdicted from performing her duties pending the conclusion of the relevant disciplinary proceedings against her and the machinery of such proceedings was set in motion ; and after the said Law was enacted the disciplinary process commenced entirely afresh under the provisions of such Law.

I am of the opinion that the course followed by the respondent Commission was the proper one in the circumstances :

It was perfectly lawful for the Commission to deal with the relevant conduct of the appellant under Law 33/67, even though such conduct was antecedent to the enactment of such Law ; because it has been held that in relation to disciplinary matters the principle of *nullum delictum sine lege* is not applicable ; see the decisions of the Council of State in Greece (" Συμβούλιον τῆς Ἐπικρατείας ") in cases 278/1932 and 645/1935, as well as the Conclusions from the Case-Law of the Council of State in Greece (" Πορίσματα Νομολογίας τοῦ Συμβουλίου τῆς Ἐπικρατείας ") 1929–1959, p. 366. Furthermore, after Law 33/67 was enacted the procedure prescribed thereunder had to be applied even in relation to offences prior to its enactment because the presumption against retrospectivity does not apply to procedural provisions (see, *inter alia*, Maxwell on Interpretation of Statutes, 12th ed., 222 ; and Odgers' Construction of Deeds and Statutes, 5th ed., 287).

Another contention of counsel for the applicant has been that the evidence adduced before the Commission in relation to the charges brought against the applicant was not heard

on oath : There is nothing in the relevant Law—Law 33/67—to either make it necessary for the Commission or entitle it to hear evidence on oath in the course of disciplinary proceedings, which are, essentially, not a judicial trial but an administrative enquiry ; I find, therefore, no merit in this contention of applicant's counsel.

It has been argued, also, on behalf of the applicant, in relation to the charge concerning the slapping of an inmate that such conduct was prohibited by regulations which had never been published in the *Gazette* and had never been brought to the knowledge of the applicant and that, therefore, she could not have been found guilty of any contravention of these regulations. On the basis of documents before me I have no doubt that the said regulations were internal regulations prescribing the proper conduct of the members of the staff which did not have to be published and they had been duly brought to the knowledge of the applicant ; and, in this respect, I do not believe the evidence of the applicant to the contrary.

The next matter with which I have to deal is whether or not it was proper for the Commission, on the material before it, to find the applicant guilty of the charges brought against her and, particularly, of that relating to improper behaviour with another female member of the staff of the hostel : It is well settled that an administrative Court in dealing with a recourse made against a disciplinary conviction cannot, as a rule, interfere with the subjective evaluation of the relevant facts as made by the appropriate organ (see, *inter alia*, the decisions of the Council of State in Greece in cases 2654/1965 and 1129/1966) ; moreover, a perusal of the reasons given for finding the applicant guilty, including the reasoning in support of the majority and minority views in connection with the charge of improper behaviour with another female member of the staff, shows that the conviction of the applicant on all charges was warranted by the material before the Commission.

It was, lastly, submitted by applicant that it was not open to the Commission to impose on her a general punishment in respect of all the charges. In view of the nature of the punishment imposed, namely compulsory retirement of the applicant from the public service, because, obviously, she was, in the circumstances, considered to be totally unsuitable as an Assistant Superintendent of Homes, I can see nothing erroneous from the point of view either of principle

or of good administration in imposing the said punishment as a general punishment in respect of all the disciplinary offences concerned.

For all the foregoing reasons this recourse fails and is dismissed accordingly, but in view of the serious nature of the punishment imposed on the applicant I have decided to make no order as to costs.

Application dismissed.
No order as to costs.