1972
Nov. 20

REPUBLIC
(PUBLIC
SERVICE
COMMISSION)

v.

LEFKOS
GEORGHIADES

[STAVRINIDES, L. LOIZOU, HADJIANASTASSIOU,
A. LOIZOU, MALACHTOS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Appellant,

and

LEFKOS GEORGHIADES,

Respondent.

(Revisional Jurisdiction Appeal No. 77).

Public Service and Public Officers—Disciplinary proceedings under section 82(3) of the Public Service Law, 1967 (Law No. 33 of 1967)—Accusatorial character of the proceedings as distinct from the inquisitorial system—Implications of—Natural justice—The rule audi alteram partem*—Non-communication to the officer concerned of the reports of the investigating officers forwarded to the Public Service Commission under section 82(1) of the statute, as well as of documents forwarded before the enactment in June 1967 of the said statute (viz. Law No. 33 of 1967,* supra*)—Such non-communication does not violate the said rule of natural justice—Because neither the officer nor his counsel requested at any stage, prior to the* sub judice *decision of the Public Service Commission, to see, inspect or take copies of the reports in question—Though they were fully aware of their existence—And any documents they asked to be produced were in fact produced at the hearing of the disciplinary case in question—Moreover, the officer was afforded every opportunity to cross-examine witnesses; and produced in evidence every document that was thought useful for the presentation of his case—And the Commission never considered or even read the documents in question, except in so far as they were made* exhibits.

Disciplinary proceedings—Disciplinary punishment—Accusatorial character of such proceedings—Implication of—Cf. inquisitorial system—Rule of natural justice audi

alteram partem—*Scope and effect—See* supra; *see further* infra passim.

Disciplinary proceedings—The non-communication to the officer charged with a disciplinary offence of the reports of the investigating officer, forwarded under section 82(1) of the said Law, does not violate the provisions of said section or any other statutory provision—Cf. supra.

Disciplinary proceedings—Disciplinary proceedings before the Public Service Commission under section 82(3) of the said Law—Accusatorial system as distinct from the inquisitorial system—Due inquiry by the Commission—Non-studying or non-considering by the Commission of the aforesaid reports of the investigating officer (supra) *—Does not render the inquiry conducted by the Commission a deficient one—Because it is of the essence of the accusatorial system that the Judge should confine himself to the facts and circumstances that the parties elect to present—Nor does the non-making available to the officer of all the material render the inquiry a non-due one—Provided that all the material that was available to the Commission was equally available to the officer.*

Accusatorial character of the disciplinary proceedings—Implications of—Cf. inquisitorial system—See supra passim; *see also* infra.

Investigation into disciplinary offences—Reports prepared under Regulation 5 of Part I of the Second Schedule to the Public Service Law, 1967 (Law No. 33 of 1967) —No specific statutory provision as to what to do with such reports—The Court cannot read and imply into the said Law an obligation to serve, without being asked, copies of the reports.

Accusatorial system of disciplinary proceedings—Investigating officer—Reports of such officer sent to the Commission under section 82(1) of the statute—They need not be made part of the record by the Commission—For if they were to be so made, the whole character of the accusatorial system would be altered.

Demotion as a disciplinary punishment—Section 79(1) of the

said Public Service Law, 1967—Demotion of two grades at one and the same time is possible in law.

Disciplinary decision—Due reasoning required—How such need is satisfied—Regulation 7 of Part III of the Second Schedule to the Public Service Law, 1967—Disciplinary decision in the instant case duly reasoned in accordance with the requirements of the said statute and the general principles of administrative law.

Reasoning of administrative decisions—Due reasoning required—Principles applicable.

Facts—Misconception of fact—Assessment or determination of facts by the administration—Judicial control of such assessment or determination—Principles governing approach of the Administrative Court to such assessment, determination or findings of fact—When the Court will interfere.

Findings of fact by the administration—Judicial control of— See immediately hereabove.

Recourse under Article 146 of the Constitution—Course of non considering and determining all issues raised by a recourse when the determination of certain of the issues raised leads to the annulment of the decision subject matter of the recourse—Is a right course—Trial Judge having properly in his discretion refrained from determining all the remaining issues—Position on appeal—But the successful party is at liberty, in the case of an appeal by the other party, to ask by way of cross-appeal the Supreme Court to deal with and determine the issues so left undetermined by the Judge of the first instance (Markou's *case* (infra) (distinguished)).

Revisional appeal—Cross-appeal—Right of the successful party to claim by cross-appeal the determination of the issues left undetermined in the first instance—Cf. supra.

Statutes—Interpretation—Principles applicable.

This case turns on the disciplinary punishment (demotion from the rank of Ambassador to the rank of Counsellor A) imposed on the public officer (now respondent) by the Public Service Commission (now the appellants) sitting as a disciplinary tribunal under the relevant provisions of the Public Service Law, 1967 (Law No. 33 of 1967). On a recourse

filed by the officer against his demotion, the learned Judge of the Supreme Court (Triantafyllides J. as he then was) who tried the case in the first instance annulled the aforesaid decision of the Public Service Commission on certain grounds, leaving undetermined a number of other grounds set forth by the officer in support of his recourse. It is against this judgment (*infra*) that the Republic through the Public Service Commission now appealed. The officer cross-appealed (*infra*).

Allowing the appeal and dismissing the cross-appeal, the Supreme Court held: (a) that the non-communication to the officer of the reports of the investigating officer forwarded to the Public Service Commission under section 82(1) of the said Law (No. 33 of 1967) does not contravene the provisions of the said section (*infra*) or any other statutory provision; (b) that such non-communication does not contravene either the rule of natural justice *audi alteram partem*, regard being had to the circumstances of this case; and (c) that the aforesaid non-communication, in view of the accusatorial character of the disciplinary proceedings, does not render the enquiry held by the Commission into the matter a deficient one.

Dealing with the cross-appeal taken by the respondent officer, the Supreme Court held that the Judge, trying in the first instance a recourse under Article 146 of the Constitution may, in his discretion, once he has annulled the decision subject matter of the recourse on one or more grounds, refrain from determining the remaining grounds of annulment, if any, as he has done in this case. Moreover, distinguishing the *Markou's* case (*infra*) the Supreme Court held that the successful party in a recourse is entitled, when he is faced with an appeal lodged by the other party, to ask the Court of Appeal (*viz.* the Supreme Court) by way of a cross-appeal to deal with, and determine, all the points raised in the first instance and left undetermined by the trial Judge as aforesaid. Dealing with the argument regarding the existence or not of facts or the reasonableness of the inferences drawn therefrom by the appellant Disciplinary Tribunal, the Supreme Court stated the reasons why it did not find necessary to go into the details of the evidence laid before the Tribunal, being content to state that there was ample material before the Commission on which it was entitled to arrive at the conclusion it did; the Supreme Court insisting that it will not interfere and substitute its

own view for that of the Commission, having itself (the Commission) weighed the probative effect of the evidence and having correctly arrived at the conclusion that the facts and circumstances, which it was its duty to consider, amounted to the disciplinary offences of which the officer (applicant, now respondent) was found guilty.

The facts of this case very briefly stated are as follows:

The respondent public officer was demoted from the rank of Ambassador to the rank of Counsellor A by a decision taken by the appellant Public Service Commission as a result of disciplinary proceedings instituted against the appellant for certain disciplinary offences. The appellant made in due course a recourse under Article 146 of the Constitution whereby he successfully challenged the validity of his aforesaid demotion, the learned Judge in the first instance, Mr. Justice Triantafyllides as he then was, annulling it on the grounds hereinafter set out (*see Lefcos Georghiades* v. *The Republic* (1970) 3 C.L.R. 380).

Against this decision of the learned Judge the Republic through the Public Service Commission took the present appeal. The then applicant (now respondent) cross-appealed (*infra*).

The trial Judge annulled the aforesaid demotion of the (then) applicant on two main grounds, that is to say:-

A. The respondents (now appellants) failed to communicate to the applicant (now respondent) the reports of the investigating officers and the attached thereto documents as well as certain other documents forwarded to the Public Service Commission (now the appellants) in relation to the procedure of examining the case against the applicant officer (now respondent) before the enactment of the relevant Public Service Law, 1967 (Law No. 33 of 1967). The said failure of communication of the reports and other documents just referred to contravenes —

(i) The *audi alteram partem* rule of natural justice, and

(ii) The provisions of section 82(1) and Regulation 3 of Part III of the Second Schedule to the aforesaid Public Service Law, 1967, and —

B. The Public Service Commission (now appellants) did not carry out a due inquiry into the case —

(i) because of the aforesaid non communication to the applicant officer (now respondent) of the aforesaid reports and other documents, and

(ii) because it did not study the said reports and documents.

Section 82(1) of the said Public Service Law, 1967 (Law No. 33 of 1967) reads as follows:

"(1) When an investigation carried out under paragraph (b) of section 80 is completed and the commission of a disciplinary offence is disclosed, the appropriate authority shall forthwith refer the matter to the Commission and shall forward to it :-

(a) the report of the investigation;

(b) the charge to be brought signed by the appropriate authority concerned; and

(c) the evidence in support thereof."

Regulation 3 of Part III of the Second Schedule to the said Law No. 33 of 1967 provides :

"3. The hearing of the case shall proceed as nearly as may be, in the same manner as the hearing of a criminal case in a summary trial."

Allowing the appeal and setting aside the judgment of the learned Judge of the first instance whereby the *sub judice* demotion of the applicant officer (now respondent) was annulled, the Court :-

Held, I : *Allowing the appeal :*

(1) Documents sent to the Public Service Commission under section 82(1) of the Public Service Law, 1967 (Law No. 33 of 1967) need not be made part of the record by the Commission; for if they were to be so made the whole character of the accusatorial system regarding disciplinary proceedings would be altered; and disciplinary proceedings under the said Law follow the accusatorial system as distinct from the inquisitorial one.

(2) On the other hand, it cannot be said in the circumstances of this case that there has been any violation of the rule of natural justice *audi alteram partem* by reason of the non-communication to the applicant officer (now respondent) of the documents forwarded to the appellant (then respondent) Public Service Commission under section 82(1) of the said Law (*supra*). Because neither the officer himself nor his counsel requested at any stage prior to the *sub judice* decision of the Commission, to see, inspect or take copies of the reports and documents in question, though they were fully aware of their existence; and any documents they asked to be produced were in fact produced at the hearing. Moreover, the officer and his counsel were afforded every opportunity to cross-examine witnesses and produced in evidence every document that was thought useful for the presentation of his (the officer's) case; and the Commission never considered or even read the documents in question, except in so far as they were made *exhibits* in Court.

(3) Moreover, the non-communication to the applicant officer (now respondent) of the aforesaid documents does not in any way violate the provisions of section 82(1) of the Law and Regulation 3 of Part III of the Second Schedule to the said Law (*supra*). This is consonant with the accusatorial (as distinct from the inquisitorial) character of the disciplinary proceedings under the aforesaid Law No. 33 of 1967 (*supra*); and indeed we are unable to find that there is any provision in the said Law that has been violated by the manner in which the Commission's decision was reached, as found by the learned trial Judge.

(4) Having in mind that the disciplinary proceedings under our Law (*supra*) come within the accusatorial system, the non-studying by the Commission of the reports sent to it under section 82(1) of the Law (*supra*) does not indicate that there has been an undue inquiry into

the matter; because it is of the essence of the accusatorial system that the judge should confine himself to the facts and circumstances that the parties elect to present; nor does the non-making available to the officer concerned of all the material which was before the Commission render the inquiry a non due one; because all the material that was available in this case to the Commission was equally available to the officer.

Held, II: *Dismissing the cross-appeal:*

(1) The Judge of this Court trying in the first instance a recourse under Article 146 of the Constitution may, in his discretion, once he has annulled the decision subject matter of the recourse on one or more grounds, refrain from determining the remaining grounds of annulment, if any, as the learned Justice has done in the present case.

(2) The successful party in a recourse under Article 146 of the Constitution is entitled, whenever he is faced with an appeal by the other party, to ask the Court of Appeal by way of a cross-appeal to deal with, and determine, all the points raised in the first instance and left undetermined by the trial Judge as aforesaid; and the Court has to so act, at least in case where the appeal succeeds (*Markou's* case (*infra*) *distinguished*).

(3) (a) As to the argument set forth by the respondent regarding the existence or not of facts or the reasonableness of the inferences drawn therefrom by the appellant Public Service Commission—sitting as a disciplinary tribunal—we do not find it necessary in the circumstances of this case to go into the details of the evidence laid before the Commission.

(b) It is enough to state that there was ample material before the Commission on which it was entitled to arrive at the conclusion

it did; and we shall not interfere and substitute our own view for that of the Commission which has duly weighed the probative effect of the evidence and has correctly arrived at the conclusion that the facts and circumstances, which it was its duty to consider, amounted to the disciplinary offences of which the officer (now respondent) was found guilty.

(4) Regarding the respondent's argument that a demotion of two grades at one and the same time—as it was done in the instant case—is in law impossible, we hold that there is nothing in the relevant statutory provisions warranting such view (see section 79(1) of the said Public Service Law, 1967 (Law No. 33 of 1967).

Appeal and
Cross-appeal dismissed.

Cases referred to :

B. Surinder Singh Kanda v. *Government of the Federation of Malaya* [1962] A.C. 322, at pp. 337, 338, 369;

Russell v. *Duke of Norfolk* [1949] 1 All E.R. 109, at pp. 115, 118;

General Medical Council v. *Spackman* [1943] 2 All E.R. 337, at p. 341;

Board of Education v. *Rice* [1911] A.C. 179, at p. 182;

Local Government Board v. *Arlidge* [1915] A.C. 120, at pp. 132-3;

Byrne v. *Kinematograph Renters Society, Ltd.* [1958] 2 All E.R. 579, at p. 599;

Ridge v. *Baldwin* [1963] 2 All E.R. 66, at pp. 80-81; [1964] A.C. 40;

Hadjigeorghiou v. *The Republic* (1968) 3 C.L.R. 326;

Durayappah v. *Fernando* [1967] 2 All E.R. 152, at p. 156;

Wiseman v. *Borneman* [1967] 3 W.L.R. 1372;

Wiseman v. Borneman [1969] 3 All E.R. 275, at pp. 277 - 278; H.L.

In re Pergamon Press Ltd. [1970] 3 All E.R. 535, at pp. 539, 540, 542;

Ex Parte Efrosyni Michaelidou (1969) 1 C.L.R. 118, at pp. 133 - 134;

R. v. *Birmingham City Justice, ex parte Chris Foreign Foods (Wholesalers) Ltd.* [1970] 3 All E.R. 945, at p. 949;

R. v. *Cornwall Quarter Sessions Appeal Committee, Ex parte Kerley,* [1956] 2 All E.R. 872, at p. 875;

R. v. *Gaming Board for Great Britain, ex parte Benaim and Another* [1970] 2 All E.R. 528, at pp. 533 - 534; [1970] 2 W.L.R. 1009, at p. 1016;

A - G v. *Briant* [1846] 15 M. and W. 169;

Marks v. *Beyfus* [1890] 25 Q.B.D. 494;

Nicolaou v. *The Republic* (1970) 3 C.L.R. 250;

Fox v. *General Medical Council* [1960] 3 All E.R. 225;

Constantinou v. *The Republic* (1969) 3 C.L.R. 190, at pp. 203, and 207 - 208;

Georghios Markou v. *The Republic* (1968) 3 C.L.R. 166, at p. 171;

Constantinides v. *The Republic* (1969) 3 C.L.R. 523, at p. 530;

Papazachariou v. *The Republic* (reported in this Part at p. 486 *ante*);

HadjiSavva v. *The Republic* (reported in this Part at p. 174 *ante,* at pp. 202 - 205);

Pierides v. *The Republic* (1969) 3 C.L.R. 274, at p. 290;

Lefkos Georghiades v. *The Republic* (1969) 3 C.L.R. 396, at p. 404 and 408;

University of Ceylon v. *Fernando* [1960] 1 All E.R. 631;

In re K. (Infants) [1965] A.C. 201;

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

Morsis and *The Republic*, 4 R.S.C.C. 133, at p. 137;

McNabb v. *United States*, 87 Law. ed. 819, at p. 827;

R. v. *Architects' Registration Tribunal, Ex parte Jaggar* [1945] 2 All E.R. 131;

Stafford v. *Minister of Health* [1946] K.B. 621, at p. 625;

Regina v. *Deduty Industrial Injuries Commissioner, Ex parte Jones* [1962] 2 Q.B. 677;

Sloan v. *General Medical Council* [1970] 2 All E.R. 686;

Pearlberg v. *Varty (Inspector of Taxes)* [1972] 2 All E.R. 6, at p. 11; H.L.;

Shareef v. *The Commissioner for Registration of Indian and Pakistani Residents* [1966] A.C. 47 P.C.;

The Board for Registration of Architects etc. v. *Kyriakides* (1966) 3 C.L.R. 640;

Iordanou v. *The Republic* (1967) 3 C.L.R. 245;

P.E.O. v. *The Board of Cinematograph Films Censors and Another* (1965) 3 C.L.R. 27;

Sofocleous (No. 1) v. *The Republic* (reported in this Part at p. 56 *ante*, at p. 60);

Platritis v. *The Republic* (1969) 3 C.L.R. 366, at pp. 374 - 375;

Sentonaris v. *The Greek Communal Chamber*, 1964 C.L.R. 300;

Decisions of the Greek Council of State Nos: 80/1961, 81/1961, 362/1961, 339/1962, 930/1962, 953/1962, 1412/1962, 1720/1962, 1721/1962, 1722/1962, 1778/1962, 7/1963, 165/1963, 443/1963, 1659/1963, 1861/1963, 1480/1961, 2157/1961, 1112/1962, 1664/1962, 1778/1962, 1659/1963, 2206/1963, 894/1962, 1112/1962, 1412/1962, 2168/1962, 1861/1963, 16/1961, 2157/1961, 899/1961, 900/1961, 2044/1962, 1777/1961, 1417/1962, 2134/1952, 1474/1956, 1508/1956.

Appeal and Cross-appeal.

Appeal and cross-appeal from the judgment * of a Judge of the Supreme Court of Cyprus (Triantafyllides, J.) given

---

* Reported in (1970) 3 C.L.R. 380.

on the 11th November, 1970, (Case No. 179/69) whereby the decision of the respondent to demote the applicant from the rank of Ambassador to the rank of Counsellor A was declared null and void.

L. Loucaides, Senior Counsel of the Republic, for the appellant.

Respondent appearing in person.

Cur. adv. vult.

The following judgments were read:

STAVRINIDES, J.: Mr. Justice Hadjianastassiou, who was to have delivered the first judgment, is unavoidably prevented from sitting with us this morning. His judgment is to the effect that he would allow the appeal and dismiss the cross-appeal without costs. It reads as follows:-

HADJIANASTASSIOU, J.: On August 11, 1968, the Public Service Commission, following the summary procedure, stated to the defendant, Mr. L. Georghiades, the substance of the complaint in the presence of his counsel. Having pleaded not guilty to those charges, the hearing of the case proceeded, and after a long trial lasting for a period of over 18 days, the Commission, on April 30, 1969, delivered its judgment and found the defendant guilty in respect of the charges against him relating to disciplinary offences *viz.*, that while he was the Ambassador of the Cyprus Republic in Moscow, U.S.S.R., he acted in his official capacity in connection with certain financial transactions involving foreign exchange as well as in the course of buying and selling cine cameràs and cars, in a manner inconsistent with his duties, responsibilities and status as a public officer and diplomatic representative of Cyprus. The Commission, exercising its powers under s. 79(1) of the Public Service Law, 1967, (Law No. 33/67), imposed upon him the disciplinary punishment of reduction from the rank of Ambassador to Counsellor A, as from June 1, 1969.

On June 16, 1969, the applicant, feeling aggrieved because of the decision of the Commission, filed a recourse No. 179/69 in the Supreme Court under Articles 12, 29 and 146 of the Constitution, claiming "a declaration of the Court that respondent's decision to demote

applicant from the rank of Ambassador to the rank of Counsellor A communicated to applicant by letter dated May 5, 1969, and received by applicant on or about May 12, 1969, is null and void and of no effect whatsoever. This application was based, *inter alia*, on these grounds :-

"That respondent's decision should be declared null and void in that :-

(a) The disciplinary offences laid against applicant conflict with the provisions of Article 12 of the Constitution and/or the accepted principles of Administrative Law relating to disciplinary offences in that they relate to alleged omissions and/or conduct prior to the enactment of Law 33/67 *i.e.* the years 1965, 1966 and 1967 and Law 33/67 has no retrospective effect.

(b) The respondents as a collective organ and/or each one of them separately and/or anyone of them were disqualified from trying the case against applicant and adjudicating upon it in that because of the existence of a serious friction between applicant and the Commission the latter were biased against applicant and thus they were not possessed of the element of impartiality of judgment which is an accepted prerequisite for any organ exercising disciplinary powers.

(c) The decision of the respondents is not duly reasoned within the meaning of Article 29 of the Constitution and the accepted principles of Administrative Law pertaining to the reasoning of judgments of disciplinary tribunals.

(d) The disciplinary offences initiated against applicant are null and void as conflicting with sections 80(b) and 82 of Law 33/67 and Appendix B, Part I of the said Law in that the procedure laid down in Rule 1 of the said Appendix has not been followed."

The opposition was filed giving notice that the decision complained of was taken in the proper exercise of res-

pondent's discretion and on the basis of all relevant material before them.

The facts are these :-

The applicant, before he was appointed in the Foreign Service of the Republic, was serving with the United Nations Organization in Lybia as a statistics expert from 1953 - 60 when he was asked by the Cyprus Government to join its service, having been offered the post of Officer in Charge, Economic Development. In the meantime, and pending the establishment of the Economic Planning Commission, he was offered the post of Development Officer in the Ministry of Finance. He also served as a Chairman of the Electricity Authority of Cyprus from 1960 - 63. In September, 1963, he was appointed as Ambassador of the Republic of Cyprus in Finland, Czechoslovakia and Sweden.

On April 24, 1968, whilst he was serving as Ambassador in Moscow, the respondent initiated disciplinary proceedings against the applicant. In the meantime, on September 7, 1967, the Council of Ministers, exercising its powers under the provisions of the Second Schedule in Part I of Law 33/67, appointed Mr. P. N. Paschalis as an investigating officer to conduct the investigation regarding the question whether the applicant has committed disciplinary offences. Because the investigation failed to take place within the period of 30 days provided in paragraph 2 of the aforesaid Second Schedule, due to various reasons, the Council of Ministers on December 21, 1967, reappointed Mr. Paschalis to carry out the said investigation. Strangely enough, due to inadvertence, the relevant decision of the Council of Ministers did not come to the knowledge of Mr. Paschalis until after the expiration of the period of 30 days. When this was communicated to the Ministry of Foreign Affairs by Mr. Paschalis, by a letter dated February 1, 1968, a new decision of the Council was issued re-appointing once again Mr. Paschalis to carry out an enquiry.

The powers of an investigating officer are laid down in paragraph 3 of the Regulations, and it provides that in carrying out an investigation, the investigating officer "shall have power to hear any witnesses or to obtain written statements from any person who may have

knowledge of any of the facts of the case, and any such person shall give all information within his knowledge and shall sign any statement so given after its having been read out to him". Then, paragraph 4 is to this effect :- "The officer concerned shall be entitled to know the case against him and shall be given an opportunity of being heard". Paragraph 5 deals with the duties of the investigating officer after the completion of the investigation, and "shall forthwith report his conclusion to the appropriate authority giving full reasons in support thereto and submitting all relevant documents".

On receiving the said report of the investigating officer, the appropriate authority, in accordance with paragraph 6 "shall forthwith refer it, with all documents submitted, to the Attorney-General of the Republic, together with its views thereon for his advice". The Attorney-General, on his part, shall, with all reasonable speed, consider the matter, and as paragraph 7 provides, "advise the appropriate authority whether a charge may be brought against the officer and, if so, shall draft the charge". Finally, on receiving the charge drafted by the Attorney-General, the appropriate authority (The Ministry of Foreign Affairs) in accordance with paragraph 8, shall "sign it and transmit it to the Chairman of the Commission with all documents submitted to the Attorney-General of the Republic".

Reverting once again to Mr. Paschalis, it appears that the decision of the Council was communicated to him on April 16, 1968, and he started immediately the investigation regarding the disciplinary offences of the applicant by taking written statements from various persons. On April 24, 1968, he addressed a letter to the applicant in compliance with paragraph 4 of the Regulations, informing him of the accusations against him, and requested him to furnish a reply not later than April, 1968. On May 28, 1968, the applicant delivered to the investigating officer a long written statement concerning the case against him. No doubt document (No. 5 attached to *exhibit A*) contained a very comprehensive description of the case against the applicant, though it is true that Mr. Paschalis did not mention the sources of his information. Then on June 3 and 4 Mr. Paschalis interviewed the applicant, who gave such

explanations again at great length orally and in writing. See document No. 8 attached to *exhibit A*. Whilst on this point, I find myself in agreement with the learned judge who said that he did not think that there has been in this connection a contravention, in a material respect, of Regulation 4 by not giving to the applicant copies of the statements obtained by Mr. Paschalis. On June 18, the report of the investigating officer, with all relevant documents, were sent to the Ministry of Foreign Affairs. In the meantime, on June 13, 1968, the Council of Ministers, exercising its powers under the same legislative provisions appointed also the then Accountant-General of the Republic, Mr. A. Ioannides as an additional investigating officer, in order to investigate another disciplinary offence, reported as being committed by applicant whilst he was an Ambassador in Moscow, relating to the operation of the bank account of the Embassy. The investigation of that case was carried out, and the report of the second investigating officer was submitted to the same Ministry on July 26, 1968.

On September 11, 1968, the Minister of Foreign Affairs wrote to the Commission referring to the case against the applicant for the alleged disciplinary offences contrary to ss. 58(1)(d) and 73(1)(b), and requested that the necessary action be taken. The said letter, in accordance with s. 82 of Law 33/67, was accompanied (a) by the reports of the investigation; (b) the charge to be brought signed by the appropriate authority concerned; and (c) the evidence in support thereof.

I think I should have added that before the promulgation of Law 33 of 1967 on June 30, 1967, the case regarding disciplinary proceedings against the applicant, was referred to the Commission earlier, but after the new law came into force the whole process was set in motion once again under the said law.

Pausing here for a moment, I would like to observe that the Commission, after receiving the necessary documents, had to deal with the question referred to it by the appropriate authority without bias, and it must give to each of the parties the opportunity of adequately presenting his own case. The decision of the Commission must be reached in the spirit and with the sense

of responsibility of a body or organ whose duty is to mete out Justice, but it does not follow that the procedure of every tribunal must be the same, unless it is prescribed by the legislative provisions.

On July 14, 1969, the hearing of the recourse started and was heard by a judge of this Court exercising jurisdiction under the provisions of s. 11(2) of Law 33/64. Subsequently, the reserved ruling of the Court was delivered dealing with a number of preliminary points. The learned trial judge, dealing with ground of law (a) raised on behalf of the applicant, said in *Georghiades* v. *The Republic*, (1969) 3 C.L.R. 396, at p. 404 :-

> "In the light of the foregoing I cannot accept that the first part of paragraph (1) of Article 12 of the Constitution—with which, only, we are concerned at this stage—can, or should, be construed so as to render applicable to disciplinary matters concerning public officers the principle of *nullum* delictum sine lege (or, nullum crimen sine lege).
>
> Thus, even on the assumption that the applicant has been charged with, or found guilty of, disciplinary offences contrary to Law 33/67—and I am leaving this issue entirely open for the time being —I cannot find that Article 12.1 has been contravened."

Later on, dealing with the question of bias by the Commission (raised in ground of Law(b)), the learned Justice said at p. 408 :-

> "This allegation has been based on the contents of certain correspondence exchanged between the Chairman of the respondent and the applicant, in his then capacity as Development Officer in the service of the Planning Commission (see *exhibit AG*).
>
> I can find nothing therein to satisfy me that the applicant has discharged the burden of establishing bias by the respondent, or its Chairman or any of its members, against him."

Finally, the Court dealing with the question of dis-

qualification of Mr. Paschalis, answered it in this way :-

> "But even when Mr. Paschalis was acting as an Investigating Officer he was not acting in a judicial or quasi-judicial capacity, because he was not called upon, or entitled, to decide the guilt or innocence of the applicant from the disciplinary point of view; he was merely investigating into acts of the applicant in order to prepare a report on the basis of which the Attorney-General would advise the appropriate authority whether the applicant might be charged disciplinarily (see the relevant regulations in Part I of the Second Schedule to Law 33/67).
>
> Bearing all the above in mind I cannot see how in the circumstances of this case the rules of natural justice can be said to have been in any way contravened through Mr. Paschalis having been appointed, and acted, as an Investigating Officer after he had given legal advice in relation to one of the matters into which he later investigated."

Then because the remaining issues which have been raised in argument by counsel were connected with the merits of this case, the Court decided not to go into them and to leave them entirely open for determination at the proper stage. I think that I should have added that the applicant did not challenge on appeal the decision of the learned judge on the above points.

The learned trial judge delivered his reserved * judgment annulling the decision of the Commission, mainly for the following reasons :-

(a) That because the procedure followed by the Commission violated the principle of *audi alteram partem*, once the applicant in making his defence, was not aware of either the reports of the investigating officers, or the contents of the evidence given against him;

(b) that documents relevant to the charges against the applicant (*exhibits a-f*) were sent to the Commission prior to the promulgation of Law 33/67, and were not brought to the knowledge of the applicant when he was defending himself;

---

* Vide (1970) 3 C.L.R. 380.

(c) that irrespective of any non-compliance with the said principle of *audi alteram partem*, the disciplinary proceedings against the applicant were conducted by the Commission contrary to the object and combined effect of s. 82(1) of Law 33/67, and Regulation 3 in Part III of the said law; and that the Commission was bound under the said law to make available to the applicant and/or his counsel, the reports and the other evidence before it; and

(d) that the Commission failed to carry out in the exercise of its powers, a due enquiry for the purposes of the disciplinary proceedings against the applicant, and because by not making available to the applicant all the material which was before it, it was deprived of the opportunity of having before it a complete explanation by the applicant in trying to exculpate himself once he was aware of all the material against him.

On January 22, 1971, counsel on behalf of the appellant-respondent raised in his notice of appeal a number of points with which I shall be dealing in due course.

On January 30, 1971, the applicant raised in his cross-appeal (a) that the trial Court "misdirected itself as to its obligation to decide on issues raised by the applicant and discussed during the hearing; (b) that there was no violation of the Rules of Natural Justice and abuse of power by the administration; and (c) not to make an order for costs in favour of the applicant".

Regarding the complaint of counsel on appeal that the learned trial judge was wrong in law in holding that the Commission was bound under the conception of natural justice to disclose to the applicant the reports of the two investigating officers, as well as the statements obtained by them (*exhibits A and B*) in the case of the investigation, I think it is necessary to see what are the principles of natural justice; what is the philosophy of the law, and to what extent the principles of natural justice ought to be followed by the Commission in the case in hand. I propose, therefore, to approach the present case by considering whether in all the circumstances, the Commission acted unfairly. The learned trial judge at least thought so, because in his judgment, rely-

ing mainly on the authority of *B. Surinder Singh Kanda* v. *Government of the Federation of Malaya* [1962] A.C. 322, had this to say at pp. 403 - 404 :-

> "In the present instance the applicant, when he made his defence before the respondent Commission, did not know of the written statements on the basis of which the reports of the two investigating officers had been prepared; and without knowledge of this material, which had been forwarded, under the aforementioned provisions of Law 33/67, to the Commission, his right to be heard in his own defence was not really worth much".

Then he goes on :

> "... at any rate, ... it was required by the relevant principle of natural justice, that the applicant when defending himself before the Commission should have known the actual contents of the reports of the two investigating officers. This is so in view of the nature of such reports : The report of Mr. Paschalis—whose good faith in this matter is not to be doubted in the least—appears to me to have overshot the limits of the requirements prescribed by regulation 5 in Part I of the Second Schedule to Law 33/67 (*viz.* that it should have contained his conclusion with full reasons in support thereof) and to be an exposition of elaborate and careful argumentation forcefully establishing the guilt of the applicant and destroying his credibility. On the other hand the report of Mr. Ioannides—who was at the time the Accountant-General of the Republic and, therefore, in a position to express a view as an expert regarding the financial matters under investigation—appears to be, to a certain limited extent, favourable for the applicant. Thus, I have found no difficulty in concluding that ignorance by the applicant, at the material time, of the full contents of these reports did severely handicap the exercise by him of his right to be heard in his own defence."

Regarding other documents relevant to the charges against the applicant (see *exhibit AF*)—which were sent to the Commission prior to the promulgation of Law

33/67 and to the commencement *ab initio* of disciplinary proceedings against him under such Law, he says:-

> "I am, again, of the view that ignorance of their contents by the applicant, when he was defending himself before the Commission, affected adversely his said right to be heard."

Finally, he concluded in these terms :-

> "In the light, therefore, of the fact that one of the two basic rules of natural justice, and of *audi alteram partem*, has not been effectively applied in the course of the disciplinary proceedings against the applicant I have been led to the conclusion that the *sub judice* decision of the respondent Commmission has to be annulled, as having been reached in a manner contrary to law."

With the greatest respect to the view of the learned trial judge, and because the present appeal revolves itself into the question whether the enquiry was conducted with due regard to the rights accorded by the principles of natural justice to the applicant as the person against whom it was directed, I intend to review some of the authorities, since these rights have been defined in varying language in a large number of cases covering a wide field. But, at the same time, I must point out that the question whether the requirements of natural justice have been met by the procedure adopted, in any given case, must depend to a great extent on the facts and circumstances of the case. As Tucker, L.J., said in *Russell* v. *Duke of Norfolk* [1949] 1 All E.R. 109 at p. 118 : "There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with, and so forth."

Lord Atkin expressed a similar view in these words in *General Medical Council* v. *Spackman* [1943] 2 All E.R. 337 at p. 341 : "Some analogy exists no doubt between the various procedures of this and other not strictly judicial bodies. But I cannot think that the pro-

cedure, which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man. I would, therefore, demur to any suggestion that the words of Lord Loreburn L.C., in *Board of Education* v. *Rice* ([1911] A.C. 179 at p. 182) affords a complete guide to the General Medical Council in the exercise of their duties".

With this in mind regarding the reservations as to the utility of general definition in this branch of the law, it appears to me that Lord Loreburn's much quoted statement in *Board of Education* v. *Rice*, affords as good a general definition as any of the nature and limits on the requirements of natural justice to hear both sides in this present case. Its effect is stated in this passage from the speech of Viscount Haldane, L.C. in *Local Government Board* v. *Arlidge* [1915] A.C. 120 at pp. 132 and 133, where he cites with approval the following words :-

> "I agree with the view expressed in an analogous case by my noble and learned friend Lord Loreburn. In *Board of Education* v. *Rice*, he laid down that, in disposing of a question which was the subject of an appeal to it, the Board of Education was under a duty to act in good faith, and to listen fairly to both sides, inasmuch as that was a duty which lay on every one who decided anything. But he went on to say that he did not think it was bound to treat such a question as though it were a trial. The Board had no power to administer an oath, and need not examine witnesses. It could he thought, obtain information in any way it thought best, always giving a fair opportunity to those who were parties in the controversy to correct or contradict any relevant statement prejudicial to their view."

Then he goes on :

> ".... I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the

statute to the contrary, to be intended to be reached by its ordinary procedure."

Later on, dealing with the complaint that the report of an inspector should have been disclosed, Viscount Haldane went on in these words :-

> "It might or might not have been useful to disclose this report, but I do not think that the Board was bound to do so, any more than it would have been bound to disclose all the minutes made on the papers in the office before a decision was come to. It is plain from Sir Horace Monro's affidavit that the order made was the order of the Board, and so long as the Board followed a procedure which was usual, and not calculated to violate the tests to which I have already referred, I think that the Board was discharging the duty imposed on it in the fashion Parliament must be taken to have contemplated when it deliberately transferred the jurisdiction, first, from a Court of summary jurisdiction to the local authority, and then, for the purposes of all appeals, from quarter sessions to an administrative department of the State. What appears to me to have been the fallacy of the judgment of the majority in the Court of Appeal is that it begs the question at the beginning by setting up the test of the procedure of a Court of justice, instead of the other standard which was laid down for such cases in *Board of Education* v. *Rice*. I do not think the Board was bound to hear the respondent orally, provided it gave him the opportunities he actually had."

Lord Shaw of Dunfermline, delivering a separate speech in the same case, said at p. 138 :-

> "The words 'natural justice' occur in arguments and sometimes in judicial pronouncements in such cases. My Lords, when a central administrative board deals with an appeal from a local authority it must do its best to act justly, and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means."

Then I turn to the judgment of Harman, J. (as he then was) in *Byrne* v. *Kinematograph Renters Society, Ltd.*, [1958] 2 All E.R. 579 at p. 599. The learned judge said this :-

> "What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the Tribunal should act in good faith. I do not think that there really is anything more."

In *Ridge* v. *Baldwin* [1963] 2 All E.R. 66, Lord Reid made a lengthy and thorough survey of the principles of natural justice applicable in this connection. I consider it useful to quote this passage at pp. 80 - 81 :-

> "The respondents' contention is that, even where there was a doubtful question whether a constable was guilty of a particular act of misconduct, the watch committee were under no obligation to hear his defence before dismissing him. In my judgment it is abundantly clear from the authorities that I have quoted that at that time the Courts would have rejected any such contention. In later cases dealing with different subject-matter opinions have been expressed in wide terms so as to appear to conflict with those earlier authorities. But learned judges who expressed those opinions generally had no power to overrule those authorities, and in any event it is a salutary rule that a judge is not to be assumed to have intended to overrule or disapprove of an authority which has not been cited to him and which he does not even mention. So I would hold that the power of dismissal in the Act of 1882 could not then have been exercised and cannot now be exercised until the watch committee have informed the constable of the grounds on which they propose to proceed and have given him a proper opportunity to present his case in defence.
>
> Next comes the question whether the respondents' failure to follow the rules of natural justice on March 7 was made good by the meeting on March 18. I do not doubt that if an officer or body

realises that it has acted hastily and reconsiders the whole matter afresh after affording to the person affected a proper opportunity to present his case then its later decision will be valid. An example is *De Verteuil* v. *Knaggs* [1918] A.C. 557. But here the appellant's solicitor was not fully informed of the charges against the appellant and the watch committee did not annul the decision which they had already published and proceed to make a new decision. In my judgment what was done on that day was a very inadequate substitute for a full rehearing. Even so three members of the committee changed their minds, and it is impossible to say what the decision of the committee would have been if there had been a full hearing after disclosure to the appellant of the whole case against him. I agree with those of your lordships who hold that this meeting of March 18 cannot affect the result of this appeal."

See *Hadjigeorghiou* v. *Republic* (1968) 3 C.L.R. 326, in which some of the English and Cyprus authorities are reviewed.

Lord Upjohn in *Durayappah* v. *Fernando* [1967] 2 All E.R. 152, dealing with the principle of *audi alteram partem*, had this to say at p. 156:-

"Their lordships were, of course, referred to the recent case of *Ridge* v. *Baldwin* where this principle was very closely and carefully examined. In that case no attempt was made to give an exhaustive classification of the cases where the principle *audi alteram partem* should be applied. In their lordships' opinion it would be wrong to do so. Outside well-known cases such as dismissal from office, deprivation of property and expulsion from clubs, there is a vast area where the principle can be applied only on most general considerations. For example, as Lord Reid when examining *R.* v. *Electricity Comrs. Ex p. London Electricity Joint Committee Co. (1920), Ltd.* pointed out, Bankes, L.J. inferred the Judicial element from the nature of the power and Atkin L.J. did the same. Pausing there, however, it should not be assumed that their lordships

necessarily agree with Lord Reid's analysis of that case or with his criticism of *Nakkuda Ali* v. *M.F. de S. Jayaratne* [1951] A.C. 66. Outside the well-known classes of cases, no general rule can be laid down as to the application of the general principle in addition to the language of the provision."

In *Wiseman* v. *Borneman* [1969] 3 All E.R. 275, Lord Reid said at pp. 277 - 278 :-

"Every public officer who has to decide whether to prosecute or raise proceedings ought first to decide whether there is a *prima facie* case but no one supposes that justice requires that he should first seek the comments of the accused or the defendant on the material before him. So there is nothing inherently unjust in reaching such a decision in the absence of the other party."

In re *Pergamon Press Ltd.* [1970] 3 All E.R. 535, Sachs, L.J. in delivering a separate judgment in this case, and dealing with the reports of inspectors, had this to say at p. 542 :-

"The reports of such officers are, of course, neither intended to be nor in fact are, made public.

To conclude that there must be an appropriate measure of natural justice, or as it is often nowadays styled 'fair play in action', in the present case is thus easy. That was indeed something which was well recognised by the inspectors, who expressly so stated more than once in the course of the proceedings. The real issue, however, is whether that measure should in relation to s. 165 investigations generally, or, alternatively, as regards this particular investigation, be reduced by the Courts to some set of rules, or whether it should be left to the inspectors, who are men of high professional qualifications, in their discretion to proceed with that fairness of procedure that is appropriate to the particular circumstances of the case as it may develop. In the application of the concept of fair play, there must be real flexibility, so that very different situations may be met without producing procedures unsuitable to the object in hand. That need for flexibility has been emphasised in a number of

authoritative passages in the judgments cited to this Court. In the forefront was that of Tucker L.J. in *Russell* v. *Duke of Norfolk*, * and the general effect of his views has been once again echoed recently by Lord Guest, Lord Donovan and Lord Wilberforce in *Wiseman* v. *Borneman*.

It is only too easy to frame a precise set of rules which may appear impeccable on paper and which may yet unduly hamper, lengthen and, indeed, perhaps even frustrate (see per Lord Reid in *Wiseman* v. *Borneman*) the activities of those engaged in investigating or otherwise dealing with matters that fall within their proper sphere. In each case careful regard must be had to the scope of the proceedings, the source of its jurisdiction (statutory in the present case), the way in which it normally falls to be conducted and its objective."

No doubt, the right to a hearing is equally fundamental to a just judicial decision that each party should have the opportunity of knowing the case against him and of stating his own case. Each party must have the chance to present his version of the facts and to make his submission on the relevant rules of law. It is too well known that the rules of Court procedure, both in England and in Cyprus are founded on these general principles of natural justice. But not all that is done even by the Courts of Law themselves, accords at all times with the extended meaning of the Rules of Natural Justice. Many an ex parte injunction is granted against a person who has no notice of the charge and no opportunity of being heard. Furthermore, the principle of *audi alteram partem* (hear both sides) is not always complied with by the Courts exercising criminal or civil jurisdiction, and the case against an accused person or a defendant in a civil action, who is given notice of the proceedings, but failed to attend, can be punished in his absence or have judgment given against him in a civil case. This, in my view, shows that the need for flexibility is required. That this is so has been emphasised in a number of cases already quoted in this judgment. Cf., Ex parte *Efrosyni Michaelidou* (1969) 1 C.L.R. 118, at pp. 133 - 134.

---

* [1949] 1 All E.R. 109 at p. 118.

In *R.* v. *Birmingham City Justice, ex parte Chris Foreign Foods (Wholesalers) Ltd.*, [1970] 3 All E.R. 945, Lord Parker, C.J., dealing with the Rules of Natural Justice, after adopting a statement made by Donovan J. in *R.* v. *Cornwall Quarter Sessions Appeal Committee, Ex parte Kerley*, [1956] 2 All E.R. 872, 875, that a justice had to bring qualities of impartiality and fairness to bear on the problem, had this to say at p. 949 :-

> "Complaint has been made that the justice in this case had a meeting with the chief veterinary officer, the public analyst and public officials on 19th March, when the matter was first referred to him, and that they never gave any evidence at the hearing on 2nd April. For my part I do not think that the justice was prevented under this procedure from hearing the evidence of those officials, having a sample taken, inspecting the sample before and in the absence of the applicants. Nor do I think it necessarily any unfairness if those officials do not give evidence at the hearing, provided always that the objectors, the applicants, are told what the point is that they have to meet, and of course at this hearing they clearly knew and had evidence to deal with it.
>
> But the point where I feel that the rules of natural justice in their limited application to such a case as this, limited to openness, impartiality and fairness, have been broken, is when the justice retired with the two officials in order, as he puts it, to take advice, and the three of them then came back into Court and he announced his decision. It seems to me that in a case such as this a justice must be very careful not to take any fresh advice or hear any fresh evidence in the absence of the objectors, unless he returns and enables the objectors to know what the advice is that he has received thus enabling them to deal with it."

Later on he said :-

> "It seems to me that in the present case the rules of natural justice in their limited, and very limited, application to a case such as this have been broken

in the present case, and I would let the writ issue."

In *R.* v. *Gaming Board for Great Britain, ex parte Benaim and Another* [1970] 2 All E.R. 528, counsel for the applicants criticised the procedure followed by the board, especially the way in which the board proposed to keep that confidential information regarding the applicants. He relied on some words used by Lord Denning in *Kanda* v. *Government of Malaya* [1962] A.C. 322 at p. 337, when he said :-

> "... that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other."

On the other hand, counsel for the board submitted that the board are free to grant or refuse a certificate as they please, they are not bound, he says, to obey the rules of natural justice any more than any other executive body.

Lord Denning, M.R. delivering the unanimous judgment in the Court of Appeal, said at pp. 533 and 534 :-

> "I cannot accept this view, I think that the board are bound to observe the rules of natural justice. The question is :- What are those rules?
>
> It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; nor as to their scope and extent. Everything depends on the subject-matter; see what Tucker L.J. said in *Russell* v. *Duke of Norfolk* and Lord Upjohn in *Durayappah* v. *Fernando*. At one time it was said that the principles only apply to judicial proceedings and not to administrative proceedings.
>
> That heresy was scotched in *Ridge* v. *Baldwin*. At another time it was said that the principles do not apply to the grant or revocation of licences. That, too, is wrong. *R.* v. *Metropolitan Police Comr., ex parte Parker* and *Nakkuda Ali* v. *M. F. de S. Jayaratne* are no longer of authority for any such proposition. See what Lord Reid and Lord Hodson said about them in *Ridge* v. *Baldwin*. So let us sheer away from these distinctions and consider the task of the board and what they should do.

The best guidance is, I think, to be found by reference to the cases of immigrants. They have no right to come in, but they have a right to be heard. The principle in that regard was well laid down by Lord Parker C.J. in *Re K. (H) (an infant)* [1967] 1 All E.R. 226 at 231, when he said :-

> '...even if an immigration officer is not acting in a judicial or quasi-judicial capacity, he must at any rate give the immigrant an opportunity of satisfying him of the matters in the subsection, and for that purpose let the immigrant know what his immediate impression is so that the immigrant can disabuse him. That is not, as I see it, a question of acting or being required to act judicially, but of being required to act fairly'.

Those words seem to me to apply to the board."

Later on he says :-

"They can, and should, receive information from the police in this country or abroad, who know something of them. They can, and should, receive information from any other reliable source. Much of it will be confidential. But that does not mean that the applicants are not to be given a chance of answering it. They must be given the chance, subject to this qualification : I do not think that they need tell the applicants the source of their information, if that would put their informant in peril or otherwise be contrary to the public interest. Even in a criminal trial, a witness cannot be asked who is his informer. The reason was well given by Eyre C.J. in *R.* v. *Hardy,* (1794) 24 State Tr 199 at 808.

> '...there is a rule which has universally obtained on account of its importance to the public for the detection of crimes, that those persons who are the channel by means of which that detection is made, should not be unnecessarily disclosed...' And Buller J. added :
>
> '...if you call for the name of the informer in such cases, no man will make a discovery, and public justice will be defeated'.

That rule was emphatically re-affirmed in *A - G.* v. *Briant*, [1846] 15 M & W 169, and *Marks* v. *Beyfus*, [1890] 25 QBD 494. That reasoning applies with equal force to the enquiries made by the board."

Finally, he says :-

"If the board were bound to disclose every detail that might iself give the informer away and put him in peril. But without disclosing every detail, I should have thought that the board ought in every case to be able to give to the applicant sufficient indication of the objections raised against him such as to enable him to answer them. That is only fair.

And the board must at all costs be fair. If they are not, these courts will not hesitate to interfere."

In *Re Pergamon Press Ltd.*, (*supra*), a case in which the Board of Trade ordered an investigation under s. 165(b) of the Companies Act, 1968, two inspectors were appointed; one of them was an eminent counsel and the other a distinguished accountant. The directors appealed to the Court of Appeal because during the investigation of the affairs of the company, the directors did not agree to allow them a right to peruse the transcripts. One counsel before the Appeal Court claimed that they had a right to see the transcripts of the evidence of the witnesses adverse to them; the other counsel claimed that they ought to see any proposed finding against them before it was included finally in the report. The third counsel claimed a right to cross-examine the witnesses. In short, the directors claimed that the inspectors should conduct the inquiry much as if it were a judicial inquiry in a Court of Law in which the directors were being charged with an offence.

On the other hand, counsel for the inspectors suggested that in point of law they were not bound by the rules of natural justice, because they were carrying out an investigation of inquiry; and that such rules applied in all cases where the tribunal was under a duty to come to a determination or decision of some kind or other.

Lord Denning, M.R. after rejecting the submission of counsel for the inspectors, said at pp. 539 - 540 ;-

"They may, if they think fit, make findings of fact which are very damaging to those whom they name. They may accuse some; they may condemn others; they may ruin reputations or careers. Their report may lead to judicial proceedings. It may expose persons to criminal prosecutions or to civil actions. It may bring about the winding-up of the company and be used itself as material for the winding up: See *Re SBA Properties Ltd.* [1967] 2 All E.R. 615. Even before the inspectors make their report, they may inform the Board of Trade of facts which tend to show that an offence has been committed—see s. 41 of the Companies Act 1967. When they do make their report, the board are bound to send a copy of it to the company; and the board may, in their discretion, publish it, if they think fit, to the public at large. Seeing that their work and their report may lead to such consequences, I am clearly of opinion that the inspectors must act fairly. This is a duty which rests on them, as on many other bodies, although they are not judicial nor quasi-judicial, but only administrative: See *R.* v. *Gaming Board for Great Britain ex parte Benaim.* The inspectors can obtain information in any way which they think best, but before they condemn or criticise a man, they must give him a fair opportunity for correcting or contradicting what is said against him. They need not quote chapter and verse. An outline of the charge will usually suffice.

That is what the inspectors here propose to do, but the directors want more. They want to see the transcripts of the witnesses who speak adversely to them, and to see any documents which may be used against them. They, or some of them, even claim to cross-examine the witnesses. In all this the directors go too far. This investigation is ordered in the public interest. It should not be impeded by measures of this kind. Witnesses should be encouraged to come forward and not hold back. Remember, this not being a judicial proceeding, the witnesses are not protected by an absolute privilege, but only by a qualified privilege: See

O'Connor v. *Waldron,* [1935] A.C. 76. It is easy to imagine a situation in which, if the name of a witness were disclosed, he might have an action brought against him, and this might deter him from telling all that he knew. No one likes to have an action brought against him, however unfounded. Every witness must, therefore, be protected. He must be encouraged to be frank. This is done by giving every witness an assurance that his evidence will be regarded as confidential and will not be used except for the purpose of the report."

Later on he says :-

"For I take it to be axiomatic that the inspectors must not use the evidence of a witness so as to make it on the basis of an adverse finding unless they give the party affected sufficient information to enable him to deal with it.

It was suggested before us that whenever the inspectors thought of deciding a conflict of evidence or of making adverse criticism of someone, they should draft the proposed passage of their report and put it before the party for his comments before including it. But I think that this also is going too far. This sort of thing should be left to the discretion of the inspectors. They must be masters of their own procedure. They should be subject to no rules save this : They must be fair. This being done, they should make their report with courage and frankness, keeping nothing back. The public interest demands it. They need have no fear because their report, so far as I can judge, is protected by an absolute privilege : See *Home* v. *Bentinck* [1820] 2 Brod & Bing 130 at 162, per *Dallas C.J. and Chatterton* v. *Secretary of State for India in Council* [1895] QB 189 at 191, per Lord Esher M.R."

I think, in the light of what has been said by Lord Denning in the last two cases, I would state, that from the material before me, Mr. Paschalis has used the evidence of the witnesses to make them the basis of a finding against the applicant, but after he has given to the party affected sufficient information to enable him to deal with it. Reading through the report of Mr.

Paschalis, I think that he acted very fairly and one can hardly call it a harsh report. I would, therefore, dissociate myself from the criticism made that he has "overshot the limits of the requirements prescribed by regulation 5 in Part I of the Second Schedule to Law 33/67 (*viz.* that it should have contained his conclusion with full reasons in support thereof) and to be an exposition of elaborate and careful argumentation forcefully establishing the guilt of the applicant and destroying his credibility."

In fact, paragraph 8 of the report shows how carefully and fairly this investigating officer was acting :-

> "Mr. Georghiades disputes some of the facts mentioned in paragraph 4 of *exhibit* 5, and surely the question as to who must be believed will be decided by the Public Service Commission if the case is finally referred to before it—but if an evaluation of the facts is made as alleged by Mr. Georghiades, it will be shown that irrespective of some insignificant points, the versions relating to the facts by both sides in substance are not really different, or they present a small difference. Mainly, it is the inference which can be drawn which is disputed by the applicant."

Finally, in paragraph 11, he says :-

> "My conclusion, in the light of the related facts and the conclusions reached, is that Mr. Georghiades has committed, or in any case, *prima facie* has committed, disciplinary offences in accordance with paragraph 7 of Part I of the Second Schedule of the Law, it is for the Attorney-General to advise whether it is possible to frame a charge against him. and in case of a confirmative advice, to proceed to formulate the charges against him."

Though it is said that the report "appears to be to a certain limited extent favourable to the applicant" I propose examining it to see whether Mr. Ioannides (the investigating officer) has acted in accordance with the concept of fair play. On July 19, 1968, he wrote to the applicant, seeking information regarding the listed remittances in his letter, which were made from the

Embassy bank account during the years 1965 - 1966. With regard to each remittance, he said :- "I would like to have explanations (a) as to the purpose of the payments; (b) how the payments are connected with the obligations of the Cyprus Embassy in Moscow; if any of the above payments are not obligations of the Cyprus Embassy I would like to be given the authority for such payments made out of public funds. The payments for which the above explanations are required are as follows...." Then the dates are given, the amount, as well as the name of the recipient of those remittances. (See appendix 'B').

On July 22, the applicant in reply, I think, tries to give some explanations regarding the Embassy bank account in Moscow and concludes as follows :-

> "Had I a personal Bank Account in Moscow, the Embassy obligations would have been met by either withdrawing money in cash or by making a transfer from the Embassy Account to my personal account. It should be a matter of indifference to the Government how I spent my money.
>
> A fact in point is the transfer of £400.- (four hundred pounds) from the Embassy Account to Mr. Vakis' account in April 1965 for the one thousand roubles, spent already by him on behalf of the Embassy, to meet Embassy obligations and one should not care less where he later remitted his £400.
>
> (a) The purposes, therefore, of these payments to meet the obligations of the Cyprus Embassy, Moscow, to myself and certain members of the staff."

On July 26, 1968, the investigating officer, Mr. Ioannides, wrote to the Minister of Foreign Affairs in these words :-

> "I have been unable by my investigation to find *evidence* which can be used in support of any proceedings for serious disciplinary action. However, the position regarding the management of the Bank Account and other related financial matters by Mr. L. Georghiades, leaves a lot to be desired as it appears that no financial discipline was exercised

during the two years which I have investigated *i.e.* 1965 and 1966. The Embassy's rouble and foreign exchange requirements were to a large extent provided by the Ambassador who in return took it upon himself to be reimbursed by either foreign exchange withdrawals or foreign exhange remittances to private destinations. The question of how and where the roubles required to meet the expenses of the Embassy in the first instance came from is not satisfactorily answered and it is upon this matter that my investigation is inconclusive. One can either believe or give the benefit of doubt to the officer under investigation or may allow oneself to make a number of assumptions as to the real sources of this rouble revenue. Any departure from proved facts will be to the detriment of the officer under investigation. Therefore, I have refrained from making any such assumptions."

Then, the report attached to this letter refers to the procedure regarding payments, and after interviewing Mr. A. Vakis and Mr. Georghiades, they both agreed, regarding the mode of the procedure. He goes on :-

"This procedure is a rather peculiar one and a departure from procedures followed by other Embassies whereby the Ambassador draws from the Bank by cheque the required sum of money to meet the expenses of the Embassies and normally that sum of money is handled by the Paying Officer. In the case of the Moscow Embassy, Mr. Georghiades was providing the requirements in roubles by withdrawals in *foreign exchange* and subsequent conversion at unknown rates of exchange and with unauthorised dealers or alternatively (in the majority of cases) by lending in the first instance the Government his own *personal roubles* which were acquired as submitted by him by the sale of private property or by transfers from Cyprus."

Regarding the transfers relating to $ 2,000 (in currency notes) on 25.2.1965, £180 (in convertible starting cheque) on 30.8.1965 and £850 (in convertible starting cheque) on 23.8.1966, the investigating officer was of the view

that these transfers did not amount to very much compared with the amounts remitted from the Embassy bank account to private destinations and the withdrawals in foreign exchange. He said, however, that one would have to accept the explanations of the Ambassador regarding the sale of private property if one is to understand how the difference was eventually made up. In this connection, he goes on, a number of assumptions can be made as to the ways and means of acquiring the extra roubles, but, as he put it, he could not himself venture into assumptions but he was restricted by the facts made available to him.

Regarding the reply given by Mr. Georghiades, he said :-

> "You will note that the reply is rather evasive and no explanation has been offered for each specific transfer as requested in my letter of 19 July, 1968 (Appendix 2). The reply given by the Ambassador that all remittances were obligations of the Cyprus Embassy to himself is not a satisfactory one in the sense that as there were sufficient money in the Embassy Bank Account there was no necessity for the Ambassador to advance his own private funds to meet the requirements of the Embassy."

Then dealing with the duties of an imprested officer, he says :-

> "It is not permissible for any public servant who is an imprested officer to take it upon himself to make private use of a Government account because he happens to have the authority to operate that account. It is submitted here that the Ambassador in this connection used the facility extended to the Government of Cyprus by the Government of the U.S.S.R. in the operation of a foreign exchange account as a convenient channel to convert and transfer private rouble funds to private destinations outside the U.S.S.R. The Embassy Bank Account was never meant to become a channel for such foreign payments."

Having shown that both investigating officers have not

used unfairly the evidence of witnesses, so as to make it the basis of an adverse finding, and that they have given ample information to the applicant affected to enable him to know and to deal with the case against him, I find it convenient to deal also with the report of the Board of Inquiry in *Kanda* case (*supra*). I think, however, that before doing so, I should have added that after reading both reports, and particularly that of Mr. Paschalis, it appears that although he has presented the statements taken from Mr. Antonakis Vakis, Stelios Hjirakleous and Mr. Fizentzides, (no statement could be made available from Miss Avraamidou), nevertheless, he expressed neither his views as to the credibility of each witness, nor the weight to be attached to the statements. As for the applicant himself, he simply drew certain conclusions relying on the statements, but without in any way attacking the credibility of the applicant or using a strong adverse language against him. I would reiterate once again that both reports have been made and presented in a very fair way. See *exhibit A* at p. 2 et seq.

Reverting now to the report in *Kanda* case, certainly no one could have put it in better language than Rigby, J. He called that report "a most damning indictment against Inspector Kanda as an unscrupulous scoundrel who had suborned witnesses, both police and civilian, to commit perjury." The report said :-

> "The Board are unanimously of the opinion that Inspector Kanda is the villain of the piece.... The Board were forced to the conclusion that Inspector Kanda is a very ambitious and thoroughly unscrupulous officer who is prepared to go to any lengths, including the fabrication of false evidence, to add to his reputation as a successful investigator. The Board could not help considering how many of his previous successful cases attained were achieved by similar methods."

I think that this report, as compared to the reports in the present case, needs no more comments on my part.

The next question which arises is : Whether the statutory procedure followed by the Commission in the present case is insufficient to achieve justice. In my

view, the Commission, in hearing the case against the applicant, had to proceed in accordance with the regulations which are set out in Part III of the Second Schedule of the said law. Paragraph 3 reads as follows :-

> "The hearing of the case shall proceed as nearly as may be, in the same manner as the hearing of a criminal case in a summary trial."

Further, the Commission has power under the provisions of paragraph 4 :

> "(a) to summon witnesses and require their attendance and that of the officer as in summary trials; (b) to require production of any document relevant to the charge; (c) to admit any evidence whether written or oral even if inadmissible in civil or criminal proceedings."

And in paragraph 7 it is clearly stated that

> "Any judgment of the Commission shall give reasons for the decision taken and shall be signed by the Chairman."

I think that I must add that the legislature was intended for the protection of the officer concerned to introduce in effect with these regulations, the accusatorial system of our Criminal Procedure Law, Cap. 155, which is based upon the presumption of innocence as well as the principle of *audi alteram partem* (hear both sides). There is no doubt that an accused person under this system has the further advantage to be represented by a counsel of his own choice and to cross-examine the witnesses called on behalf of the complainant, whilst prosecuting counsel are restrained by strict convention from acting oppressively or unfairly.

I should have also added that under s. 62, an accused person may "before pleading, apply to be supplied with a copy of the charge or information, and the Court shall cause him to be supplied with such copy or he may apply for further time to plead, and the Court may allow such further time on such terms as it may think fit."

In the present case, I would recall that the Commission was exonerated by the trial judge from the charge of being biased, and in hearing the case of the applicant,

it has employed the procedure prescribed by the aforesaid regulations treating the matter as if it was a trial. Going through the voluminous minutes of the trial, it is clear that the prosecuting counsel on behalf of the appropriate authority opened its case in the usual way it is done before an Assize Court. In order to see, therefore, whether a fair opportunity has been given to the applicant to meet the case against him before the Commission, must depend mainly on the evidence of Mr. Paschalis who carried out the investigation and obtained statements both from the witnesses who have given evidence, as well as from the applicant himself.

Having read the whole evidence including the cross-examination to which Mr. Paschalis was subjected to by the experienced counsel of the applicant, it is abundantly clear to me that the applicant was adequately informed of the case he had to meet, and given every opportunity of meeting it. I am also of the view that the Commission has conducted the proceedings with all fairness, and in turning the pages regarding the examination-in-chief as well as the cross-examination, one would find that counsel on behalf of the appropriate auhority was not allowed to produce any statement or notes obtained by Mr. Paschalis from the applicant which were not signed by him.

Although it is true, and it has been conceded by the other side, that no copies of the reports were given to the applicant in advance, nevertheless, it appears to me that during the examination of Mr. Paschalis and the other witnesses, various documents were produced both at the instance of counsel for the appropriate authority, and made use of by the two counsel appearing for the applicant. No doubt, both the applicant and his counsel were aware of the existence of the reports of both investigating officers, once the Ministry of Foreign Affairs was bound under the provisions of paragraph 8 of the Regulations to transmit the charge drafted by the Attorney-General to the Chairman of the Commission with all written statements attached thereto.

I am sure that the complaint of the applicant *viz.* that he has not been given copies of the reports of the investigating officers, might have been a more powerful

objection once the Commission had power to require production of any documents relevant to the charge, if his counsel had asked to be given the opportunity to peruse both the reports before the opening of the case and/or during the hearing, and his request has been refused. But he never made such request, although regarding the report of Mr. Ioannides, he appeared to have knowledge of its contents; and reference was made regarding certain extracts by both counsel appearing before the Commission. In my view, therefore, there is no ground for supposing that, if counsel made such a request, it would not have been granted, once other documents were produced at his request. That this is so, finds also support from the statement made by Mr. Loucaides before this Court that, had the applicant asked for such documents, his request would have been met and no privilege would have been claimed regarding their production.

Mr. Hjioannou, appearing on behalf of the applicant before the learned trial judge, tried to excuse his client (unsuccessfully in my view) for his failure to request the production of the reports of the investigating officers —once other documents were produced without objection —by making a statement that the applicant had asked his then counsel Mr. Clerides to request the production of the reports, but his counsel did not adopt such a course, adding that apparently his former counsel was under the impression that in law the applicant was not entitled to use or have copies of such reports.

In view of the fact that the requirements of natural justice must depend on the circumstances of each case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject matter, and so forth, I think, after having considered everything which has been said by counsel on behalf of the appellant and the applicant himself, I regret that I find myself unable to agree with the learned trial judge that the failure of the Commission to provide the applicant with copies of the reports and other relevant documents, was sufficient to nullify the proceedings of the Commission as failing to comply with the requirements of natural justice in the circumstances of the present case, and the rules under which the Commission has acted.

Furthermore, in my opinion, the decision of *Kanda*, relied upon by the learned trial judge, must be construed and applied not in the circumstances of the case of the applicant, but in the context of that decision in which it was given. I, therefore, believe that that case is distinguishable from the present case, particularly so, because of the damning report against Inspector Kanda. No doubt, the report in that case which dealt in detail with the evidence of each witness heard by the Board of Inquiry and expressed views as to the credibility of each witness, and the weight to be attached to his statement needs no comment on my part, because Rigby J., as I said earlier, called it a most damning indictment. The question in that case was whether the hearing by the adjudicating officer was vitiated by his being furnished with that report by the Board of Inquiry, but unknown to Inspector Kanda, who had no knowledge of its contents until about the fourth day of the trial of the action; and without being given an opportunity of correcting or contradicting it. It is perhaps significant to quote what was said between the trial judge and the legal adviser to the Government, in order to show that all along counsel claimed privilege in respect of the Board of Inquiry file :-

> "The Court to legal adviser : Am of the opinion that in the interests of justice the findings of the board of inquiry ought to be made available to the Court and to the plaintiff and privilege waived thereon..."
>
> "Legal adviser : Must be some misunderstanding —they have always been available—and no privilege claimed thereon."
>
> "Court : It is my clear impression that both in Court and throughout earlier proceedings in chambers, privilege has been consistently claimed in respect of the board of inquiry file and the findings thereon."

I am sure that those proceedings could not have been made with an impartial and fair mind, and this was the reason why Lord Denning came to the conclusion that the dismissal of Inspector Kanda was made contrary to the principles of natural justice, because he was not

given a reasonable opportunity of being heard. Lord Denning said at p. 338 :-

> "Applying these principles, their Lordships are of opinion that inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in agreement with the view expressed by Rigby J. in these words: 'In my view, the furnishing of a copy of the findings of the board of inquiry to the adjudicating officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal'. The mistake of the police authorities was no doubt made entirely in good faith. It was quite proper to let the adjudicating officer have the statements of the witnesses. The Regulations show that it is necessary for him to have them. He will then read those out in the presence of the accused. But their Lordships do not think it was correct to let him have the report of the board of inquiry unless the accused also had it so as to be able to correct or contradict the statements in it to his prejudice."

Pausing here for a moment, it would be observed in contrast to what appeared in *Kanda* case, that although in this case the applicant did not know of the actual contents of the documents complained of, nevertheless, whatever came to be used against him which was contained in the said documents was established by evidence during the trial. I do not think, therefore, that once the accusatorial system has been followed, that because the reports were in the hands of the Commission (under the provisions of the law) that by itself amounts to hearing evidence or receiving representations from one side behind the back of the other, because at the hearing evidence was given by all witnesses who made written statements to both investigating officers, and the applicant was told what were the points he had to meet; and,

of course, at this hearing he actually knew and had evidence which dealt with those points. In my view, going through the procedure followed, the commission has brought during the whole of the trial qualities of impartiality and fairness. In the light of all those judicial pronouncements and in the circumstances of the present case, I find myself in agreement with counsel for the appellant on this point.

Regarding the question about the documents which were sent to the Commission prior to the promulgation of Law 33/67, I think I can dispose of this point shortly by saying that I do not agree that ignorance of their contents by the applicant affected adversely his right to be heard once those documents, as it appears from the correspondence of the Commission, were never used or made use of during the trial of the applicant.

Now, what is the combined effect of s. 82(1) of Law 33/67 and paragraph 3 of the Regulations set down in part 3 of the Second Schedule to the said law? The answer, according to the learned trial judge, who found that the disciplinary proceedings were conducted in a manner which was inconsistent with the aforesaid provisions of the law is this :-

> "I have not known of any summary trial of a criminal case at which there was anything placed before the judge trying such case without it being, too, within the knowledge of the accused person and his counsel; and yet this is what has happened on this occasion, in the sense that the evidence in support of the charges brought against the applicant, which was forwarded to the respondent Commission in compliance with section 82(1) of Law 33/67, as well as the reports of the two investigating officers, which were likewise forwarded to the Commission, were before the Commission but not within the knowledge of the applicant and his counsel. In my view the proper course for the Commission was to make such evidence, which consisted of the written statements of various persons and of documentary *exhibits,* part of the record of the hearing before it, because it was forwarded to it in that connection (and under regulation 4(c)

in Part III of the Second Schedule to Law 33/67 it could admit evidence which would be 'inadmissible in civil or criminal proceedings'); it being understood, of course, that it was open to the Commission to decide, either of its own motion or at the request of a party before it, that any of the said persons should be called to give oral evidence, too, during the hearing before the Commission. Moreover, the reports of the two investigating officers ought to have been made available to applicant and his counsel (not only, as stated earlier in this judgment, as a matter of natural justice, in the circumstances of this case) but, also, as a matter of law—the said section 82(1) and regulation 3—once they had been forwarded to the Commission, by the complainant Ministry, in relation to the disciplinary proceedings before it, and they were available both to its members and to counsel appearing for such Ministry."

I regret that I have the misfortune to find myself once again in disagreement with the learned trial judge on the question of construction of the aforesaid provisions of Law 33/67. In my view, the Commission, in hearing the case of the applicant, was bound to follow the accusatorial system of our Criminal Procedure Law, which is in strong contrast with the inquisitorial system of Continental Europe. In France, a searching preliminary inquiry is made by a Juge de' instruction, who investigates the circumstances of the crime and rigorously examines the accused in private, who may be represented by counsel. If the accused is sent to trial, he is again examined by the presiding judge, although there is a procurer-general to conduct the prosecution. Our criminal procedure, in contrast, as I have said earlier, is based upon the presumption of innocence. The judge is usually dispassionate, and tends to assist the accused rather than the prosecution. With these considerations in mind, and once a senior counsel was appearing on behalf of the appropriate authority to conduct the prosecution against the applicant, I fail to understand how the Commission would be entitled under the law to follow the inquisitorial system and introduce during the trial of the applicant all written statements obtained by

the witnesses and other documents, before counsel for the prosecution or the defence, decide that such documents were necessary in order to support the charge or, indeed, be considered as helping the applicant in his defence. I think, that the Commission, like any other judge exercising criminal jurisdiction, is entitled to call himself a witness, not called by either party to the proceedings, or require the production of any document relevant to the charge, in his endeavour to find out the truth, but, certainly, he cannot turn himself into a procurer-general.

I think, with the utmost respect, the Commission in this case followed the correct summary procedure, and has left counsel for the prosecution to carry on his duties by calling witnesses and documentary evidence in exactly the same way followed in a trial in a Court of Law. I, therefore, have no doubt, that this procedure accords with the notion of acting fairly and impartially, but allowing each counsel, if requested, to allow the production of any relevant document during the course of the trial.

Regarding the further point that the reports of the two investigating officers ought to have been made available to the applicant and/or his counsel as a matter of law, I am afraid that I do not share such view (unless again a request is made), for the same reasons I have given earlier, and because, in the application of the concept of fair play, there must be real flexibility so that very different situations may be met without producing procedures unsuitable to the object in hand. What was, indeed, clear, was that the Commission should be at all costs fair, allowing a party to the proceedings to inspect the reports of the investigating officers, and not that they were entitled under the law to be given copies in advance. No doubt, in this case, it is clear, in my view, that all along the Commission was fair: it has given to the applicant sufficient indication of the matters raised against him, and has enabled him to answer them by oral or documentary evidence. Furthermore, I repeat, the applicant or his counsel have failed to request for the production of those reports, and it is too late now to claim that under the law the Commission was bound to produce them as part of the record at the trial of

the applicant. Regarding the reports, I think one should see the criticism of Lord Denning in *Pergamon Press Ltd.* (*supra*), referred to in my judgment.

Regarding the words used by the learned trial judge "I have not known of any summary trial or a criminal case at which there was anything placed before the judge trying such case without it being too within the knowledge of the accused person and his counsel", I think the answer is provided by the late Lord Parker C.J. in *Rex* v. *Birmingham City Justice* (*supra*), when he said at p. 949, already quoted in this judgment :

> "For my part, I do not think that the Justice was prevented under this procedure from hearing the evidence of those officials, having a sample taken, inspecting the sample before and in the absence of the applicants. Nor do I think it necessarily any unfairness if those officials do not give evidence at the hearing, provided always that the objectors, the applicants, are told what the point is that they have to meet, and, of course, at this hearing they clearly knew and had evidence to deal with it."

Those words seem to me to apply to the Commission in this case.

The last ground of annulment was that the decision of the Commission was reached without due inquiry. Although going through the application, no such relief is sought by the applicant, nevertheless, out of respect, I think I would venture to express my own point of view on this issue. Having gone through the authorities relied upon, and particularly *Nicolaou* v. *The Republic* (1970) 3 C.L.R. 250 the headnote reads, *inter alia*, as follows :-

> "Annulled for absence of due enquiry, through the failure of the respondent Council to give applicant a chance of being personally heard and calling witnessess."

Stavrinides, J. in his judgment said at p. 254 :-

> "... and without overlooking the material that the Council had before it, I think, on the whole,

that under the latter principle it should have given the applicant a chance of being personally heard and calling witnesses and that its failure to do so is a ground of annulment. However, I need not labour this point, because in my opinion the subject decision must be annulled for lack of due reasoning."

Regarding the next case relied upon, *Fox* v. *General Medical Council* [1960] 3 All E.R. 225, in my view, having read this decision, the point in issue was that evidence was tendered but it was rejected and with respect, does not carry the case of the applicant any further, because, in the present case, as it has been shown, the prosecution called witnesses, they were cross-examined by counsel for the applicant, he gave evidence himself and called other witnesses.

In *Constantinou* v. *The Republic* (1969) 3 C.L.R. 190, dealing with the question of what is required of a tribunal in conducting an inquiry, I said at p. 203 :-

"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 p. 182). However, the matter is now regulated by statutory provision laying down the procedure to be followed and as to how the council should conduct such inquiry in order to decide as to whether a person is an 'entitled officer'."

Later on I concluded in these terms :-

"In my view, it would be observed from the wording of this section, that the council was not bound in law to hear afresh the applicant and his witness Mr. Costas Efstathiou, or indeed, any other witness, in the absence of an application by the applicant that he intended to place new evidence before them."

In the present case, as I have said earlier, the inquiry

carried out by the Commission was based on the system of our Criminal Law, and, in my view, not only such procedure does not conflict with the notion of "due inquiry", but, on the contrary, our system is considered a land mark safeguarding mostly the interest of an accused person; and that such statutory procedure is sufficient to achieve justice at all times. Needless to add, as it has been said (see *General Medical Council* v. *Spackman*), there can have been no due inquiry if the rules of natural justice have not been observed, and this is true in my view.

For the reasons I have endeavoured to explain, and in the circumstances of this case, I would adopt and follow the principle so well laid down by Lord Reid in *Wiseman* v. *Borneman* (*supra*) at p. 277 :-

> "Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances, and I would be sorry to see this fundamental general principle degenerate into a series of hard and fast rules. For a long time the Courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation."

Directing myself with these judicial pronouncements, and in the circumstances of this case, I would, therefore, allow the appeal because I am convinced that our criminal procedure is sufficient to achieve justice at all times when the Commission acts fairly.

Regarding the complaint of misdirection raised by the applicant, I am of the opinion that, once the decision of the Commission has been declared null and void on any one of the grounds of law claiming relief, the learned trial judge was not in any way bound to deal with the rest of the said grounds, because the administration had a duty to re-examine the whole matter afresh. However, because the said decision has been challenged by the appellant-respondent, I think that the applicant was

certainly entitled to cross-appeal in order to protect his legitimate interest arising out of those issues, which, though argued, were not decided by the learned judge. Having reached this view, I am of the opinion that the majority decision in *Markou* v. *The Republic* (1968) 3 C.L.R. 166, should not be followed, because it is distinguishable in the present case. In *Markou* (*supra*) the appeal was lodged by the successful party in that recourse. The appellant (applicant) in that case, was asking the Court to declare that the decision of the respondent was null and void and of no effect whatsoever, under the provisions of Article 146 paragraph 4(b) of the Constitution. In fact, the learned judge who heard the case at first instance made the declaration sought in favour of the appellant. Although, once the decision has been declared null and void and it was the duty of the administration to reconsider the matter, counsel for the appellant argued that if he did not take the appeal the two points raised in his notice of appeal might be considered as *res judicata*. Josephides, J., delivering a separate judgment in that case, in dismissing the appeal, said at p. 171 :-

> "I am of the view that, once the decision of the respondent has been declared null and void and it is his duty to re-examine the matter, the whole matter should be left open. If the party concerned *i.e.* the appellant, is aggrieved by any fresh decision of the Administration then he will have the right to file a fresh recourse under the provisions of Article 146, if he can bring himself within the ambit of that Article, which provides that, on a complaint against an administrative decision that it is contrary to any of the provisions of the Constitution or of any law or was made in excess or abuse of powers, this Court has power to examine the matter and, if satisfied that the complaint has been proved, declare such decision null and void."

As I was also a member of the Full Bench of the Supreme Court, I concurred with the view taken by both Vassiliades, P., and Josephides, J., in dismissing the appeal. I think that the applicant is entitled to cross-appeal in this case, and the answer is provided by

Vassiliades, P., in *Constantinides* v. *The Republic* (1969) 3 C.L.R. 523 when he said at p. 530 :-

> "The case was originally heard under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, (No. 33 of 1964) by one of the judges of this Court, whose decision in the matter is the subject of the present appeal to the Court, taken under the proviso to the same subsection. The question to be determined in such an appeal, continues to be the validity of the administrative decision which is challenged by the recourse, as now seen in the light of the proceedings before the trial judge, including his judgment. (See *Costas Pikis* v. *The Republic*—Rev. App. 34 (1968) 3 C.L.R. 303). The recourse under Article 146 is made to the Court; and its subject is all along the validity of the administrative act or decision challenged."

Those words seem to me to apply to the applicant regarding the issues not already decided by the learned trial judge and I would, therefore, find myself unable to agree with the applicant that the learned judge misdirected himself on this issue.

Regarding the next complaint of the applicant, *viz.*, that the non-determination of all the points raised by him deprived him of the right of access to the Court, I think that this argument, with respect to the applicant, is untenable, not only for the reasons I have given earlier, but because it is obvious, having perused the record of the trial Court, that he has been afforded by the learned judge a long hearing indeed, in the Supreme Court assigned to him by the Constitution of the Republic, and cannot now claim, under Article 146, that justice was not done in his case, since he still has access in the same Court. I would, therefore, dismiss this point also.

The next complaint of the applicant was that the decision of the Commission was not duly reasoned in accordance with the provisions of Regulation 7 of the Regulations set out in Part III of the Second Schedule to Law 33/67. I think that I find myself in full agreement with the applicant, that the judgment of the Com-

mission should give reasons for such decision, since the whole object of that Regulation specifically requires reasons to be given in order to enable the person concerned, *viz.*, the applicant, as well as the Court, on a review of the case, to ascertain in his case whether the decision is well founded in fact and in law. The legislature having provided that reasons shall be given, in my view, that must clearly be read as meaning that proper, adequate, reasons must be given; the reasons that are set out, whether they are right or wrong, must be reasons which not only will be intelligible, but also can reasonably be said that it deals with the substantial points which have been raised before it. Of course, I would make it quite clear, that failure to give reasons in relation to minor points, would not be sufficient to invoke the jurisdiction of this Court. There must be something wrong and inadequate in the reasons that are given in order to make this Court invalidate the administrative decision. In my view, therefore, having gone carefully through the decision of the Commission, the reasons so stated fairly comply with the legislative requirements of Regulation 7, that the applicant who is affected by such decision should know why the decision was against him and what the reasons for it were. I would, therefore, once again, dismiss also this point. See the recent case *Papazachariou* v. *The Republic* (reported in this Part at p. 486 *ante*). See also *Hadjisavva* v. *The Republic* (reported in this Part at p. 174 *ante*, at pp. 202-205).

The further question posed is (a) whether the decision of the Commission should be invalidated because it was based on non-existing facts; and (b) whether the evaluation of the evidence was wrongly made by the said Commission.

Regarding the findings of fact, there is a long line of cases which decide that there is a presumption in favour of the correctness of the findings of fact by the administration. This presumption is weakened, once the applicant succeeds in rendering possible the existence of misconception of fact on the part of the Commission, even by creating doubts in the mind of the Court about the correctness of such findings of fact. In *Pierides* v. *The Republic* (1969) 3 C.L.R. 274, dealing with this point, I said at p. 290:-

"In reaching this conclusion, to annul the decision of the Public Service Commission, I have adopted and followed a passage from the well-known textbook on the Law of Administrative Acts by Stassinopoulos, 1951 edn. at p. 304. The effect of this passage is that the presumption in favour of the correctness of the finding of fact by the administration, is weakened, once the litigant succeeds in rendering the misconception possible, that is, simply to create doubts in the mind of the judge about the correctness of the findings of fact by the administration. In such cases, the judge, finding himself in doubt, is not inclined to follow the aforesaid presumption, but he resorts to the one of the two courses; that is, he either (a) directs production of evidence, or (b) he annuls the act so that the administration may ascertain the actual circumstances in a way not leaving doubts." See also *Stavros Sentonaris* v. *The Greek Communal Chamber*, 1964 C.L.R. 300.

The former decision was adopted and followed by me in *Hadjisavva* v. *The Republic* (reported in this Part at p. 174, *ante*, at pp. 201-203).

There is no doubt, therefore, that our Supreme Court, in exercising its competence under Article 146 of the Constitution, has to examine whether a certain administrative act can be annulled as contravening the provisions of the law. The mistaken valuation of the real facts and the mistaken subjection or non-subjection of those facts to the said legal provisions, constitutes contravention of the law for the purposes of Article 146. See the well-known textbook of Tsatsos, 3rd edn., on "application for annulment before the Council of State", at p. 31 et seq. See also Waline Droit Administratif, at p. 438 et seq. In case 368 of 1937, the Greek Council of State, dealing with the question of misconception of the real facts, took the view that misconception of the facts by the administration is an indirect contravention of the law, and provides a reason for the annulment of such decision of the administration.

For the reasons I have endeavoured to explain, and directing myself with these judicial pronouncements, I

have decided, after going through the documentary and oral evidence, as well as the decision of the Commission that there was no misconseption as to the real facts, to dismiss this contention of the applicant.

Regarding the second leg of the question I posed, I think that the answer is provided in *Constantinou* v. *The Republic* (1969) 3 C.L.R. 190 at pp. 207 - 208 :-

> "I would like to reiterate once again what has been said in a number of cases, that the evaluation of the evidence remains the province of the council, and that the Court, in reviewing the determination of the council, would not interfere if there was any evidence on which the council could reasonably have come to the conclusion which they did. If, on the other hand, there was no evidence upon which they could reasonably have arrived at that conclusion or they have misconceived the effect of the facts before them, or they misdirected themselves on the question of the law, then their decision can be reviewed by this Court.
>
> Having had the advantage of perusing carefully all the material before me, and after having reviewed the determination of the council, I have reached the view that it was acting under a misconception of the real facts, that the activities of the applicant did not amount to a direct or indirect participation in the liberation struggle; and that there was no clear evidence that the then Government had neither formed such a view nor suspected the applicant; and that pressure was brought upon the applicant to retire."

I think that I should reiterate once again that the decision of the Commission is a reasoned judgment; they put on record in a summary form their findings from the evidence before them; they drew inferences from such facts, and they arrived at their conclusions after they have formed their views as to the credibility or reliability of the witnesses they have heard; they also have indicated their opinion on the law and the conclusions which they have come to.

With these considerations in mind, I turn to the first

charge that the applicant was meddling in exchange transactions by unorthodox procedures for purposes of personal gain. The facts regarding those transactions, particularly for the years 1965, 1966 and 1967, were placed before the Commission, and in effect it shows that the applicant had never withdrawn any roubles from the official account of the Embassy with the bank in Moscow, for the expenses of the Embassy, but instead he was paying the expenses by roubles provided by his own money in roubles, in spite of the warning given to him by the Director-General of the Ministry of Finance in his letter of February 15, 1965, regarding payments made by him in respect of furniture purchased for the use of the Embassy. This letter reads, *inter alia*, as follows :-

> "On all three occasions expenditure was incurred by you without authority and without funds being available and your Ministry had the unpleasant task of seeking covering approval which was secured after your personal representations with my Minister.
>
> You are no doubt aware of the correct procedure that, under our existing financial regulations and budgetary legislation, no expenditure can be incurred unless there is sufficient provision for it in the Budget. The question of unauthorised expenditure by Embassies abroad in general has already had to be reported to the Council of Ministers on more than one occassion and the latest Decision on the matter (No. 4295 dated 12th November, 1964) is that 'the Ministry of Foreign Affairs should once again draw the attention of all Ambassadors to the previous instructions that in no case can they incur unauthorised expenditure and that in future they will be held personally and pecuniarily responsible for such irregularities'."

From the evidence, it appears that after the applicant was paying the expenses of the Embassy, he was getting the equivalent of these roubles at the official rate, which was about 2.50 roubles per pound from the embassy's bank account, in sterling or in any other foreign exchange. There is no doubt that the applicant admitted

to Mr. Paschalis and to the Commission, that from 1965, 1966 and 1967, he never withdrew roubles from the bank account of the Embassy, but he went on to add that the proceeds of the roubles came from the sale of his belongings, amounting to £11,000.

Having had the advantage of forceful and able argument from both the counsel for the respondent and the applicant, and having reviewed all the material before me, including the judgment of the Commission, I have come to the conclusion not to interfere with the findings of the Commission, because there was sufficient evidence on which they could have reasonably arrived at the conclusions which they did regarding all the disciplinary charges against the applicant. I would like to add, however, in fairness to the Foreign Service as a whole, that the question of entertainment expenses, selling of personal belongings with or without permission, and the handling of the bank account, are serious matters which I think ought to be gone into more carefully by the appropriate authority, with a view of giving clear and unambiguous instructions thus finally leaving no room for misunderstanding among the personnel of the Foreign Office.

Finally, the last point argued by the applicant was that the Commission erred in law by demoting him by two ranks from the rank of Ambassador to that of Counsellor Grade A, because, under the provisions of the Foreign Service Law, 1960, (as amended), the hierarchy is Ambassador, Minister Plenipotentiary, Counsellor, or General Consul, grade A. The applicant relied on the Decision of the Greek Council of State, No. 233/31. I find myself unable to adhere to the view expressed by the applicant, because it is clear, in my opinion, that it was reasonably open to the Commission to impose the disciplinary punishment on him in demoting him to the rank of Counsellor. The Commission was entitled, I repeat, to impose any one of the disciplinary punishments provided in s. 79(1) of Law 33/67, because, according to the wording of this section, the intention of the legislature was to make it clear that it was giving the Commission a discretionary power to demote an officer who was found guilty of a disciplinary offence, to a lower post, without having to follow the Decision

of the Greek Council of State which was based on the statutory provisions in Greece. As I said, I have no doubt that the section, as drafted, must be read to mean that it was giving power to the Commission to demote him to any rank, and not necessarily to the immediately lower rank. Cf. *Platritis* v. *The Republic* (1969) 3 C.L.R. 366, at pp. 374 - 375.

For the reasons I have endeavoured to explain at length, I have reached the view that it was reasonably open to the Commission, in view of the evidence before them, to find the applicant guilty of the four disciplinary offences, and I would, therefore, dismiss the cross-appeal of the applicant.

STAVRINIDES, J. : I will now ask Mr. Justice A. Loizou to read his judgment.

A. LOIZOU, J. : This is an appeal and cross-appeal under s. 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (No. 33/64) from the judgment * of a judge of this Court who dealt with this recourse, made under Article 146 of the Constitution, in the first instance.

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, applied to the Court for a declaration that the decision of the Public Service Commission (hereinafter referred to as "the Commission") to demote him from the rank of Ambassador to the rank of Counsellor A is null and void. The said decision was, in fact, so declared by the judgment of the learned trial judge under appeal on the grounds therein stated, and with which I shall be dealing in the course of this judgment.

The applicant was serving in the diplomatic service with the rank of Ambassador and was at the time material to the present proceedings the Ambassador of the Republic in Moscow, U.S.S.R. On the 16th May, 1967, the Ministry of Foreign Affairs addressed a letter to the Commission requesting them to take disciplinary

---

* Published in (1970) 3 C.L.R. 380.

proceedings against the applicant. A number of documents were attached thereto. The Commission dealt with the matter at its meeting of the 8th June, 1967, and decided to refer the matter to the Attorney-General of the Republic for framing the necessary charges. Before, however, any charges were preferred under the then prevailing practice, the Public Service Law, 1967 (No. 33/67) was enacted, long overdue as it was, making specific provisions regarding the holding of enquiries into the commission of disciplinary offences by public officers and laying down the procedure to be followed by the Commission at the hearing of disciplinary offences and other relevant matters thereto, such as disciplinary punishment, etc. These provisions appear in Part VII under the heading "Disciplinary Code" ss. 73 - 85 inclusive, as well as in the First and Second Schedules to the Law.

Pursuant to the provisions of ss. 80 - 82 of Law 33/67, the Commission referred the matter back to the Ministry of Foreign Affairs for appropriate action. Mr. P. Paschalis, a counsel of the Republic, was nominated by the Council of Ministers to conduct the investigation into these matters. This nomination was done in accordance with the provisions of section 80(b) of the Law which reads as follows :-

> "... in any other case, cause an investigation to be made in the prescribed manner and then proceed as provided in section 82 :
>
> Provided that until Regulations are made prescribing the manner of investigation, the Regulations set out in Part I of the Second Schedule apply."

Whilst on this point, it will be useful to quote also the said Second Schedule, Part I which sets out the Regulations at present governing the investigation of offences —

> "1. The appropriate authority concerned shall, as expeditiously as possible, nominate one or more officers of its Ministry or Office (in this Part referred to as the 'investigating officer') to conduct the investigation. The investigating officer shall be a senior officer who shall be of a higher rank than the officer concerned :

Provided that if in any case the appropriate authority considers that it would not be possible, practicable or advisable to nominate an investigating officer from its Ministry or Office, it shall refer the matter to the Council of Ministers which shall nominate a suitable officer to conduct the investigation.

2. The investigation shall be carried out as expeditiously as possible and shall in any case be completed not later than thirty days from the date of the direction for investigation.

3. In carrying out an investigation the investigating officer shall have power to hear any witnesses or to obtain written statements from any person who may have knowledge of any of the facts of the case and any such person shall give all information within his knowledge and shall sign any statement so given after it shall have been read out to him.

4. The officer concerned shall be entitled to know the case against him and shall be given an opportunity of being heard.

5. After the completion of the investigation the investigating officer shall forthwith report his conclusion to the appropriate authority giving full reasons in support thereof and submitting all relevant documents.

6. On receiving the report of the investigating officer, the appropriate authority shall forthwith refer it, with all documents submitted, to the Attorney-General of the Republic together with its views thereon for his advice.

7. The Attorney-General of the Republic shall, with all reasonable speed, consider the matter and advise the appropriate authority whether a charge may be brought against the officer and, if so, shall draft the charge.

8. On receiving the charge drafted by the Attorney-General the appropriate authority shall sign it and transmit it to the Chairman of the Commission with all documents submitted to the Attorney-General of the Republic."

Mr. Paschalis took all the relevant statements concerning the case against the applicant, and informed the latter by letter of the facts of such case and requested by the same letter certain explanations. The applicant delivered to the investigating officer a written statement concerning the case against him. There followed further questions by the investigating officer. When the investigation was concluded, the report of the said investigating officer with all relevant documents was sent to the Ministry of Foreign Affairs. The said report and documents were *exhibit "A"* at the trial of the recourse and cover pp. 19 - 109 of the record. This was done in compliance with Regulation 5, hereinabove set out. The investigation of Mr. Paschalis covered the main part of the case.

In respect of the remainder and apparently in so far as it related to matters connected with accounts, the Council of Ministers appointed also Mr. A. Ioannides, the then Accountant-General of the Republic, as an investigating officer under the same provisions of the Law. The report of the said investigating officer was also submitted to the Ministry of Foreign Affairs. His report and the documents attached thereto, were marked as *exhibit "B"* and appear in pp. 110 - 119 of the record.

In accordance with Regulation 6, the appropriate authority submitted the reports and all documents attached thereto, to the Attorney-General of the Republic for his advice. The appropriate charges were drafted by the Attorney-General, and upon being received by the appropriate authority, they were signed and transmitted to the Chairman of the Commission with all documents submitted to the Attorney-General of the Republic in compliance with Regulation 8 hereof.

As pointed out, the four disciplinary charges preferred against the applicant, stripped of their legal form, were that while he was the Ambassador of the Republic in Moscow he acted in his official capacity, in connection with certain financial transactions involving foreign exchange and in the course of buying and selling cine cameras and cars, in a manner inconsistent with his duties, responsibilities and status as a public officer and a diplomatic representative of Cyprus and also that he

authorized the payment to a lady of public money, as damages for breach of contract of employment with her, as if she had been employed by the Embassy, whilst in fact she had been engaged personally as teacher or governess of his children.

The trial Judge disposed of the complaints of the applicant that he had not been given an opportunity of being heard at the stage when a departmental inquiry was being carried out for the purpose of ascertaining whether disciplinary offences had been committed by the applicant or not and ruled that in accordance with the Law and the principles of natural justice it was enough if such opportunity is given at the stage of the investigation carried out in order to ascertain whether disciplinary charges are to be brought against an officer or not. I agree that under the Public Service Law that is so.

The trial Judge also dealt with the applicant's contention that one of the two investigating officers, namely Mr. Paschalis, did not carry out his duties properly, in that, he failed to comply duly with the provisions of Regulation 4 (of Part I of the Second Schedule to the Law, hereinabove set out). In fact, the essence of the applicant's complaint in this respect, was that Mr. Paschalis did not divulge to him the whole case against him, especially as Mr. Paschalis did not show to the applicant the statement obtained in the course of the investigation, nor did he even tell the applicant who the makers of such statements were. The learned trial Judge after dealing with the manner in which Mr. Paschalis had performed his duties concluded by saying —

> "I have no doubt that in the course of this exhaustively detailed process the applicant came 'to know the case against him' to such an extent as to amount to substantial compliance with the requirements laid down by the aforementioned regulation 4.
>
> Also, with all these in mind, as well because Mr. Paschalis, as in investigating officer, had neither been called upon or was he entitled to decide about the guilt or innocence of the applicant from a disciplinary point of view, but he was merely investigating into actions of the applicant in order to prepare a report on the basis of which the Attorney-

General would advise the Minister of Foreign Affairs whether or not the applicant might be charged disciplinarily, for trial by the respondent Commission, I am of the view that in the circumstances, there has not been, either any contravention of the principles of natural justice due to the manner in which Mr. Paschalis has conducted his investigation."

The findings of the learned trial Judge and the conclusions reached in this respect on these points, are, to my mind, most useful, inasmuch as they show that Mr. Paschalis carried out his duties properly and in compliance with the Law. He divulged the whole of the case against the applicant and his report contained nothing more than his conclusions forwarded to the appropriate authority, giving full reasons in support thereof.

One of the grounds of law relied upon by the applicant in support of his application for annulment of the decision of the Commission was that —

"The respondent as a collective organ and/or each one of them separately and/or anyone of them were disqualified from trying the case against the applicant and adjudicating upon it, in that because of the existence of serious friction between the applicant and the Commission, the latter were biased against applicant, and thus they were not possessed of the element of impartiality of judgment which is an accepted prerequisite of any organ exercising disciplinary powers."

This matter was determined by the learned trial judge in his decision on preliminary issues. (See *Lefkos Georghiades* v. *The Republic* (1969) 3 C.L.R. 396, at p. 408) where it is stated :-

"This allegation has been based on the contents of certain correspondence exchanged between the Chairman of the respondent and the applicant, in his then capacity as Development Officer in the service of the Planning Commission (see *exhibit AG*).

I can find nothing therein to satisfy me that the

applicant has discharged the burden of establishing bias by the respondent or its Chairman or any of its members against him."

The proceedings before the Commission are regulated by section 82 of the Law, which also sets out the documents and reports that have to be forwarded to it. Omitting words which do not matter for our present purpose, it reads :-

"82.—(a) When an investigation carried out under paragraph (b) of section 80 is completed and the commission of a disciplinary offence is disclosed, the appropriate authority shall forthwith refer the matter to the Commission and shall forward to it —

(a) the report of the investigation;

(b) the charge to be brought signed by the appropriate authority concerned; and

(c) the evidential material in support thereof.

(2) Disciplinary proceedings before the Commission shall commence by the preferment of the charge sent by the appropriate authority as in sub-section (1) provided

(3) The hearing of the case before the Commission shall be conducted and completed in the prescribed manner :

Provided that, until Regulations are made in this respect, the Regulations set out in Part III of the Second Schedule shall apply.

(4) In any proceedings before the Commission under this Part the officer concerned may be represented by counsel of his own choice."

Connected with the aforesaid provision is Regulation 3 of Part III of the Second Schedule to the Law. It reads :-

"3. The hearing of the case shall proceed, as nearly as may be, in the same manner as the hearing of a criminal case in a summary trial."

As observed by the learned trial Judge, there is no express

provision in the Law as to what the Commission is expected to do with "the report of the investigation" or with "the evidential material in support" of the charges, after such material is forwarded to the Commission under the aforesaid section, but he finds that the said material "has to be forwarded to the Commission in relation to the disciplinary proceedings before it". In this respect, it appears from the record, and responsible statement from counsel for the Commission, that all these documents were throughout the proceedings on the table in front of the Commission and documents desired to be produced as *exhibits* were taken therefrom by either side and produced as such. It is not suggested that any other use was made by the Commission.

The learned trial Judge on the 16th October, 1970 some time after the conclusion of the hearing, thought it necessary to reopen the case. The reason was the complaint on the applicant's side, that he had been severely handicapped in defending himself before the Commission, because a number of documents, including the reports of the two investigating officers, were never made available to him, although on the 6th February, 1969, in the course of the final addresses before the Commission, counsel appearing then for the applicant, referred to the contents of the report of one of the said officers, namely Mr. Ioannides, which apparently was thought favourable to the applicant. It was, therefore, directed that at the resumed hearing counsel should be heard—and evidence, if need be, would be received—regarding the following :-

(a) Whether or not the applicant knew—and, if so, to what extent and how—of the contents of the documents mentioned in the list *Exhibit "AS"*, or of any of them.

(b) What use the respondent Commission could, or ought to, have made of the said documents, and what use it actually did make of all or any of them, in relation to the disciplinary charges against the applicant.

(c) Whether or not, in the light of what will be stated in relation to (a) and (b) above, any rule of natural justice has been contravened or the respondent Commission has been deprived of the opportunity of having before it material facts or the process leading to

the *sub judice* decision of the Commission has been rendered otherwise defective in any material respect.

On the 26th October, 1970, counsel appearing for the applicant, and counsel for the Commission, made statements and in the light of their context it was thought unnecessary to call any evidence. Such a course is consonant with the practice of this Court that no evidence should be called on statements of fact by counsel which are not disputed. In effect, there was no disagreement in substance between the two counsel. *Exhibit "AS"* referred to in the aforesaid direction, is a list of documents consisting of two parts. The first part numbered 1 - 9 is the list of documents forwarded to the Commission before the enactment of Law 33/67. The second part refers to the reports of the two investigating officers and the documents attached thereto. It was conceded that the applicant did not know the contents of the documents in *Exhibit "AS"* but such part of it as was used in the disciplinary proceedings held under the Public Service Law, and put as evidence before the Commission at the hearing. No action was taken on these documents, as it appears from the minutes of the Commission of the 8th June, 1969, earlier referred to in this judgment. The rest of the documents were those required under section 82(1) of the law to be forwarded to the Commission. Of these, the reports of the two investigating officers and the documents attached thereto, other than those which were marked as *exhibits* during the disciplinary trial, were never supplied to the applicant, or studied by him for the purposes of the disciplinary process against him.

The other documents contained in the second part of the list consist on the one hand, of statements by witnesses who testified later before the Commission on the lines of those statements; and on the other hand, of correspondence between the investigating officers and the applicant, written statements by the applicant to them, accompanied by documents supplied to them given by him, all of which documents within his knowledge and produced as *exhibits* in the disciplinary proceedings, and finally all other documents and documentary evidence given, to the investigating officers by persons who later testified as witnesses before the Commission and either

produced such documents or most of them, as *exhibits*, or repeated their contents by way of oral evidence. Excepting those of the documents in *Exhibit "AS"* which were produced as *exhibits* before the Commission and subject to what has been said about the report of Mr. Ioannides, none of the rest were as such, apart from the fact of their existence, placed before the Commission as evidence of any of the matters in issue in the disciplinary proceedings in question. The report of Mr. Paschalis was not placed before the Commission as evidence of its contents. Mr. Paschalis, however, was called as a witness at the disciplinary proceedings in order to testify as to what the applicant had told him in the course of the investigations and produced all relevant documents handed over to him by the applicant. He was not, however, questioned as to his reports by counsel. It is not in dispute that neither the applicant nor his counsel requested at any stage prior to the decision of the Commission, to see, inspect, or take copies of the documents mentioned in the list of *Exhibit "AS"*, excepting those which were produced as *exhibits* before the Commission, some of which attached to the investigating officers' report were so produced at the instance of the applicant through his counsel. From the statement, however, of counsel on the 26th October, 1970, it was apparent that it had occurred to the applicant and accordingly instructed his counsel at that time to request that they be furnished with the reports of the investigating officers, but such a course was not adopted by his counsel. There is, however, a positive statement by counsel for the Commission, and apparently that statement has been accepted as correct and acted upon by the learned trial judge, as will appear later on in this judgment, to the effect that the Commission never considered or even read the reports of the investigating officers and the documents attached thereto, except in so far as they were made *exhibits*.

Before proceeding any further, it may be helpful to revert to the report of Mr. Paschalis, which appears to be the most contested document of all those to which the complaint of non-supply to the applicant relates. Mr. Paschalis, at the beginning of his report, refers to the accusations that he had to investigate against the appli-

cant and to the relevant provisions of the Law. He gives the historical sequence of his investigations, mentions all *exhibits* and statements obtained by him and reaches his conclusions commenting also on the explanations and facts advanced by the applicant and concludes by saying :- "My conclusions, in view of the facts hereinabove set out, are that Mr. Geoghiades has committed, or, in any case *prima facie* has committed disciplinary offences in accordance with paragraph 7, Part I of the Second Schedule to the Law. It is up to the Attorney-General to advise whether there can be preferred against Mr. Georghiades charges and in case of a positive advice, proceed to formulate the charges."

Disciplinary proceedings were commenced by the preferment of the charge and the hearing of the case proceeded substantially in the same manner as the hearing of a criminal case in a summary trial. The applicant was defended by counsel, except for a day when on the 7th November, 1969 the applicant appeared in person stating that he had withdrawn the instructions from counsel who had appeared for him in the past, because they were not following his instructions, and he did not intend to brief any other counsel. He said that thenceforth he would be handling the case personally, nevertheless he engaged and he was represented by, counsel for the rest of the proceedings. He was afforded every opportunity to cross-examine witnesses and produced in evidence every document that was thought useful for the presentation of his case.

Going through the 320 pages of the record of the proceedings before the Commission, one cannot fail to be impressed by the patience and fairness with which the proceedings were conducted.

It has been thought necessary to deal rather extensively with the facts and circumstances of the present case and also with the statutory provisions and rules under which the Commission is expected to act, because as Tucker L.J., said in *Russell* v. *Duke of Norfolk* [1949] 1 All E.R. 109 at p. 115 :

> "There are in my view no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements

of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth."

This dictum received approval and was applied in a number of cases, as for instance, *University of Ceylon* v. *Fernando* [1960] 1 All E.R. 631, in *Re K. (Infants)* [1965] A.C. 201 and more recently in the case of *Re Pergamon Press* [1970] 3 All E.R. 535.

The following outstanding features in these proceedings are in accordance with the dictum referred to above, relevant :-

A. The whole of the case against the applicant was substantially placed before the applicant who was given every opportunity of being heard in the course of the investigation by the investigating officers.

B. Both investigating officers considered what could be considered as a *prima facie* case for the Attorney-General whose responsibility was to consider whether a charge should be preferred or not.

C. The proceedings before the Commission were conducted properly and there is no complaint about them.

D. All documents required under section 82(1) of Law 33/67 were forwarded to the Commission which made no use of other than having them available so that documentary *exhibits* contained in those files could be produced, as in fact they were produced at the instance of either side.

E. Copies of these documents as such were not supplied to the applicant on the initiative of the Commission. On the other hand, the applicant did not, at any stage, ask to be supplied with those documents, though it cannot escape one's attention that any documents he asked to be produced were in fact produced at the hearing.

F. The applicant was fully aware, and not merely presumed to be aware, of the existence of the reports, statements and other documents constituting the matter forwarded to the Commission under section 82(1).

G. Allegations of bias were dismissed by the learned trial Judge for the reasons given in his lucid interim decision and judgment, and I say, with respect, rightly so, in my view.

Before proceeding any further, I would like to make a distinction between the documents forwarded to the Commission before the enactment of the Public Service Law, 1967 and the documents forwarded to it under the provisions of section 82(1) of the said Law.

The first bundle of documents was not used by the Commission directly in relation to the charges eventually preferred against the applicant, and the only objection about them is that their knowledge might raise a complaint of bias on behalf of the Commission against the applicant, but this matter was resolved by the learned trial Judge and in any event it would be far fetched to say that it was contrary to natural justice for them to adjudicate, merely because these documents came to their knowledge. A scrutiny of the matter does not justify a complaint that their nondisclosure amounted to a denial to the applicant of a fair hearing. They cannot be considered as violating the *audi alteram partem* rule as such, and it will be unreasonable to find that they might give rise to any real likelihood of bias.

One should not lose sight of the fact that administrative organs, such as the Commission, are bound to acquire knowledge about a person, his acts and his antecedents, but the non disclosure of such knowledge does not automatically constitute a violation of the *audi alteram partem* rule. In this case it can be definitely said that it does not.

There is no dispute in the present proceedings that the rules of natural justice and especially the *audi alteram partem* rule with which we are concerned, apply to disciplinary proceedings. These rules were traced by an 18th century judge to the happenings in the garden of Eden when God asked Adam "Hast thou not eaten of the tree?"

In our system they have been part and parcel of our Common Law tradition and have been given constitutional validity since 1960. (See *Haros* and *The Republic*, 4 R.S.C.C. 39 at p. 44 and the authorities referred to

therein, as well as *Morsis* and *the Republic*, 4 R.S.C.C. p. 133 at p. 137). These principles are equally respected and observed in every country where procedural fairness is considered as an indispensable ingredient of liberty. In Tsatsos Recourse of Annulment, 3rd Edition, p. 308 under the heading The *Right to be heard*, one reads :-

> "The right of a hearing acquires an exceptional aspect in regulating the relations of the state with its employees of all grades. Whenever the state is about to take an unfavourable disciplinary or quasi disciplinary step against a person to whom the act intended to be issued refers, he should be called upon, so as to put forward his views, by giving him adequate time. In other words even if the Law does not make provision for the hearing of the interested party the duty of the administration to a prior hearing is embodied in the very meaning of the provisions, which afford to the administration the ease to issue an unfavourable act. This right of the subject is one of the most deeply rooted in human sense of justice. The violation of this right has in the past been a feature of absolutism. Analogous is the right of every accused person not to be tried without his defence if he so desires."

In the United States in *McNabb* v. *United States*, 87 Law. ed. 819 at p. 827, Frankfurter, J. said :-

> "The history of liberty has largely been the history of the observance of procedural safeguards."

In France the rights of the defence (droit de la defense) are scrupulously observed, as stated in Odent Contentieux Administratif, 2nd Ed. at p. 1353 under the title *Procedure Applicable* —

> "There can be no question of setting out here in detail the rules of procedure which have to be observed so that a disciplinary punishment be regularly pronounced... I confine myself therefore, in reminding the most important of such principles. The most fundamental of these principles is certainly that according to which nobody, whether he is a public officer or not, can be struck with a sanction if he has not previously been put in a

position to defend himself properly in respect of the complaints against him."

Also the assumption that the rules of natural justice apply only to proceedings before Courts of Justice, is no longer valid. (See *Local Government Board* v. *Arlidge* [1915] A.C. 120 at p. 138). From this case it may be relevant to quote here also the following passage from the opinion of Lord Parmoor, which I consider most pertinent, at p. 140. It reads :-

> "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 legal 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. The general tests to be applied have been expressed in two cases which came before this House, *Spackman* v. *Plumstead Board of Works* [1885] 10 App. Cas. 299 and *Board of Education* v. *Rice* [1911] A.C. 179."

I propose now to deal with the two grounds of law upon which the learned trial Judge annulled the decision of the Commission, each one divided into two sub-heads. The grounds relied upon in the Notice of Appeal are that the trial Court wrongly annulled the decision of the Public Service Commission dated the 30th April, 1969 on the ground that —

A. The non communication to the applicant of the reports of the investigating officers and the attached thereto documents and certain other documents forwarded to the Commission in relation to the procedure of examining the case against the applicant before the enactment of Law 33/67, violated —

(i) The *audi alteram partem* rule of natural justice, and

(ii) The provisions of section 82(1) and Regulation 3 of Part III of the Second Schedule to the Law 33/67, and

B. The Public Service Commission did not carry out a due inquiry into the case —

(i) Because of the non communication to the applicant of the reports and the attached thereto documents, and

(ii) because it did not study the said reports and documents.

In the Notice of Appeal it is further stated that under the circumstances the grounds of the annulment by the trial Court are not legally valid and proceeded to give further the reasons for this contention.

The learned trial Judge dealt with one of the rules of natural justice which is applicable to disciplinary proceedings, that is to say, the *audi alteram partem* rule, *viz.* that the person charged should have the opportunity of being heard in his own defence in a manner in which such right shall be really worth what it is meant to be, and in support of this proposition, he referred first to the case of *B. Surinder Singh Kanda* v. *Government of the Federation of Malaya* [1962] A.C. 322 by quoting an extract from the judgment of Lord Denning (at page 337) where there is a clear exposition of the law on the matter. I am in full agreement with the proposition therein enunciated. He also referred to a number of authorities where "the need for sufficient knowledge by a person of the case which he has to meet was stressed."

The learned trial Judge found that —

> "In the present instance the applicant, when he made his defence before the respondent Commission, did not know of the written statements on the basis of which the reports of the two investigating officers had been prepared; and without knowledge of this material, which had been forwarded, under the aforementioned provisions of Law 33/67, to the Commission, his right to be heard in his own defence was not really worth much (see, in this respect, the already quoted dictum of Lord Denning in the *Kanda* case, *supra*)."

He then dealt with the reports of Mr. Paschalis and Mr. Ioannides. He commented on the contents of the report of Mr. Paschalis and observed that it was an exposition of elaborate and careful argumentation forcibly establishing the guilt of the applicant and destroying his credibility. He compared the two reports and noted that the report of the latter was to a certain limited extent, favourable for the applicant and concluded by saying—"Thus I have found no difficulty in concluding that the ignorance by the applicant at the material time of the full contents of these reports, did severely handicap the exercise by him of his right to be heard in his own defence". He dealt then with other documents relevant to the charges against the applicant sent to the Commission prior to the promulgation of Law 33/67 and expressed the view that—"Ignorance of their contents by the applicant when he was defending himself before the Commission affected adversely his said right to be heard."

I have already dealt with the effect of these documents and drawn a clear distinction between them and the documents sent to he Commission under section 82(1) of the Law. So, I do not propose to say about them anything more. He then proceeded to annul the *sub judice* decision of the Commission, as having been reached contrary to Law in the light of the fact that one of the two basic rules of natural justice, that of *audi alteram partem*, had not been sufficiently applied in the course of the disciplinary proceedings against the applicant.

Before proceeding any further, it is considered necessary to deal with the cases cited by the learned trial Judge in his judgment, as briefly as possible.

In *R.* v. *Architects' Registration Tribunal, Ex parte Jaggar* [1945] 2 All E.R. 131, it was held that it was improper for a tribunal which acted in a quasi judicial capacity to consider and give weight to evidence contained in documents the contents and source of which were not divulged to the applicant. As stated by Lewis J. at page 139 of the report —

> "In my view, this is a case in which the tribunal were wrong in not letting Mr. Jaggar or his counsel

have knowledge of those documents if the tribunal were going to *look at them and use them.*"

And further down —

"As the matter stands at present, I feel that this motion should succeed on this second ground which is set out in the notice; that the tribunal *received evidence* regarding the applicant's case and improperly declined to communicate the substance thereof to the applicant or to give him an opportunity of rebutting any adverse statement contained therein."

It is obvious from the sentence underlined by me, that in this case the gist of the reasoning was that the tribunal looked and made use of the documents complained of. The tribunal had before it and used documents which they declined to communicate to the applicant and which should have been disclosed or documents which the applicant was entitled to see, if they were going to be used, and I emphasize the words "to be used" by the tribunal. In fact, they did make such use by looking at these documents and basing thereon what they called "relevant questions."

The next case is *Stafford* v. *Minister of Health* [1946] K.B. p. 621, where the detailed statement of a local authority's case was not communicated to a land owner who, on being informed by the local Authority of their intention to apply to the Minister of Health for confirmation of an order for the compulsory purchase of land belonging to him, he submitted notice and grounds of objection to the Minister. Charles, J. at page 625, said :-

"The mere giving of the notice of objection, in accordance with the statutory requirement, and setting out the grounds of objection is not an adequate presentation of the appellant's case. If the rural district council's view was to be *taken, and it was proper that it should be,* it *ought to have been communicated to the appellant,* who should then have had an opportunity of presenting in adequate form the case which he had done no more than adumbrate by the headings in his grounds of ob-

jection. That being my view, the order as confirmed is bad and must be quashed."

This proposition was based on what was said by Lord Loreburn, L.C. in *Board of Education* v. *Rice* [1911] A.C. 179 at p. 182, a passage also relied upon in the *Kanda* case (*supra*) that "Those who are to make orders 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."

In *Regina* v. *Deputy Industrial Injuries Commissioner Ex parte Jones* [1962] 2 Q.B. 677, it was held, that when there was an oral hearing before a quasi judicial tribunal, that tribunal might not, apart from express provision, continue to hear evidence privately after the oral hearing and before arriving at its decision without informing the parties of the advice or information it had received and allowing them either to have a further hearing or giving them an opportunity of commenting on that advisory information and making their final submissions thereon. This was a case where an appeal was heard by the Deputy Commissioner who decided after an oral hearing that he needed the assistance of a specialist in rheumatology. The case papers were sent to the specialist who then saw the Deputy Commissioner and the Deputy Commissioner read to him his notes of the evidence and the specialist advised him. The Deputy Commissioner without informing the parties of the course he had taken, gave him written decision allowed the Insurance Officer's appeal and referred to the advice of the specialist by saying that "In view of this advice I cannot find that the applicant has proved his case and I must, therefore, find that he did not suffer an industrial accident". Lord Parker, C.J., drew in that case the distinction between using an assessor merely as a dictionary, in which case he saw nothing wrong in consulting him in a private room and the danger that exists that such an assessor may also give advice. It was found that the Deputy Commissioner had not come to his final conclusion in the matter, until he had got the advice of the expert and that was a violation of the rules of natural justice in the sense that the applicant was not given an opportunity of correcting or

contradicting the expert advice given to the Deputy Commissioner.

Along the same lines was determined the case of *R.* v. *Birmingham City Justice, ex parte Chris Foreign Foods (Wholesalers) Ltd.* [1970] 3 All E.R. 945. This was a case where at the conclusion of the applicant's case the justice retired together with the public analyst and the chief veterinary officer, stating that he wished to take advice from them. All three returned some minutes later and the justice announced that he found the sweet potatoes unprocessed and so unfit for human consumption. It was held that the justice in the exercise of his functions was under a duty to act openly, impartially and fairly. The retirement of the justice in the company of two officials in order to take advice and the return of all three persons just prior to his decision, amounted to a breach of natural justice, since he did not inform the applicants of the advice tendered and give them the opportunity to counter it.

In *Ridge* v. *Baldwin & Others* [1964] A.C. 40, a chief constable was acquitted of charges of corruption, but after his acquittal when he applied for reinstatement, the Watch Committee at a meeting, decided that he had been negligent in the discharge of his duties as Chief Constable and, in purported exercise of statutory powers, they dismissed him from that office. No specific charge was formulated against him either at that meeting or at another held later when the appellant's solicitor addressed the Committee. But the Watch Committee in arriving at their decision considered *inter alia*, his own statement in evidence and the observations made by the trial Judge. A useful passage appears in the judgment of Lord Reid at page 64. It reads :-

> "The principle *audi alteram partem* goes back many centuries in our law and appears in a multitude of judgments of judges of the highest authority. In modern times opinions have sometimes been expressed to the effect that natural justice is so vague as to be practically meaningless. But I would regard these as tainted by the perennial fallacy that

because something cannot be cut and dried or nicely weighed or measured therefore it does not exist."

And further down at page 65 it says :-

> "It appears to me that one reason why the authorities on natural justice have been found difficult to reconcile is that insufficient attention has been paid to the great difference between various kinds of cases in which it has been sought to apply the principle. What a minister ought to do in considering objections to a scheme may be very different from what a watch committee ought to do in considering whether to dismiss a chief constable."

It was a case where there were regulations, but there was no compliance with them in any respect and Lord Morris of Borth-y-Gest at page 113, says :-

> "In my judgment, once there was a report or allegation from which it appeared that a chief constable may have committed an offence it was a condition precedent to any dismissal based on a finding of guilt of such offence that the regulations should in essentials have been put into operation. They included and incorporated the principles of natural justice which, as Harman L.J. said, is only fair play in action. It is well established that the essential requirements of natural justice at least include that before someone is condemned he is to have an opportunity of defending himself, and in order that he may do so he is to be made aware of the charges or allegations or suggestions which he has to meet : see *Kanda* v. *Government of Malava* (*supra*).
>
> My Lords, here is something which is basic to our system : the importance of upholding it far transcends the significance of any particular case."

I shall refer to a few more decided cases which I find useful in appreciating further the question under consideration.

In the case of *Wiseman* v. *Borneman* [1967] 3 W.L.R. 1372, it was held that since the procedure laid down by section 28 (4) and (5) of the Finance Act, 1960 was

to determine whether there was a *prima facie* case and was not intended to be in the nature of a trial, the rules of natural justice had no application. That section 28 provided that the tribunal should make its determination on the documents before it, so that it was not possible to read into its provisions a further provision that the tax payer should have an opportuniy of replying to the counter statement. This case is very useful when considering the circumstances under which Courts may supplement the procedure laid down in legislation where they have found that to be necessary for the purpose of achieving justice and procedural fairness. This case was heard on appeal before the House of Lords (1969) 3 All E.R. 275. Lord Reid, at p. 277, letters G - H said :-

> "Natural justice requires that the procedure before any tribunal which is acting judicially shall be fair in all the circumstances, and I would be sorry to see this fundamental general principle degenerate into a series of hard and fast rules. For a long time the courts have, without objection from Parliament, supplemented procedure laid down in legislation where they have found that to be necessary for this purpose. But before this unusual kind of power is exercised it must be clear that the statutory procedure is insufficient to achieve justice and that to require additional steps would not frustrate the apparent purpose of the legislation."

This dictum was applied in *Re Pergamon Press* [1970] 3 All E.R. 535. Lord Morris at p. 278 (of the *Wiseman* case, *supra*) said :-

> "..... (that) natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will lay down exactly

what must, in various divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only 'fair play in action'."

This dictum was approved in *Sloan* v. *General Medical Council* [1970] 2 All E.R. 686. In this case it was held that the fact that the Commission did not tender B., or any other witness, for cross-examination by F. was not a failure to comply with the rules of natural justice, but the position might have been different if F. had asked to be allowed to cross-examine B. and had not been allowed to do so; neither was the fact that two witnesses had been questioned by the vice-chancellor alone a failure to comply with the principles of natural justice and on the facts of this case, it was held that the finding of the Commission had been reached with due regard to those principles. *In University of Ceylon* v. *Fernando* (*supra*), Lord Jenkins said at p. 638 :-

> "The last general statement as to the requirements of natural justice to which their Lordships would refer is that of Harman, J., in *Byrne* v. *Kinematograph Renters Society Ltd.*, of which their Lordships would express their approval. The learned judge said this :-
>
> > 'What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and thirdly, of course, that the tribunal should act in good faith. I do not think that there really is anything more'."

Wiseman v. *Borneman* (*supra*) was considered in *Pearlberg* v. *Varty* (Inspector of Taxes) [1972] 2 All E.R. p. 6 (a House of Lords decision). Lord Hailsham of St. Marylebone, L.C. at page 11 said :-

> "Despite the majestic conception of natural justice on which it was argued, I do not believe that this case involves any important legal principle at all. On the contrary, it is only another example of the

general proposition that decisions of the courts on particular statutes should be based in the first instance on a careful, even meticulous, construction of what that statute actually means in the context in which it was passed. It is true, of course, that the courts will lean heavily against any construction of a statute which would be manifestly unfair. But they have no power to amend or supplement the language of a statute merely because on one view of the matter a subject feels himself entitled to a larger degree of say in the making of a decision than the statute accords him. Still less is it the functioning of the courts to form first a judgment on the fairness of an Act of Parliament and then to amend or supplement it with new provisions so as to make it conform to that judgment. The doctrine of natural justice has come in for increasing consideration in recent years, and the courts generally, and Your Lordships' House in particular, have, I think rightly, advanced its frontiers considerably. But at the same time they have taken an increasingly sophisticated view of what it requires in individual cases."

And Viscount Dilhorne (at page 15) whilst respectfully agreeing with the passage from Lord Reid at page 277 hereinabove quoted, said :-

"I would only emphasise that one should not start by assuming that what Parliament has done in the lengthy process of legislation is unfair. One should rather assume that what has been done is fair until the contrary is shown."

The non disclosure of relevant evidential material to a party who may potentially be prejudiced by it amounts to a *prima facie* violation of natural justice independently of whether the material in question came into being before, during, or after the hearing.

I have referred to a number of such cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. As is pointed out by S.A. de Smith in his, Judicial Review of Administrative Action, 2nd Edition, at page 191 —

"If the deciding body is or has the trappings of a judicial tribunal and receiver or appears to receive evidence ex parte or holds ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

A number of cases are cited in support of this proposition, one of them being that of *Kanda* v. *Government of Malaya* (*supra*), another that of *Shareef* v. *The Commissioner for Registration of Indian and Pakistani Residents* [1966] A.C. 47, a Privy Council decision on appeal from Ceylon, which deals with the inadequate disclosure of relevant facts. The facts of the latter case are nearer to the facts of the present case in the sense that I shall shortly explain.

The *Shareef* case was one where Indian or Pakistani residents possessed of certain residential qualifications might apply for registration as citizens of Ceylon. Under the Indian and Pakistani Residents (Citizenship) Act, 3/49, as amended, (Section 8(1)) the Commissioner for Registration of such residents or his deputy, "shall refer any such application for verification of the particulars and statements therein to the area investigating officer and under section 8(4) the report of the investigating officer shall be taken into consideration in dealing with the application". It was held that in such an inquiry the principles of natural justice should be observed, so that a party should be given fair notice of the case made against him and an adequate opportunity at the proper time to meet that case. It would have been in accordance with normal fair conduct of an inquiry to disclose the report of the investigating officer and the report on which the letter from the Director of Education was made, and it was not fair that the school teacher should have been examined by the deputy commissioner on the details of the investigating officer's report without disclosing the report to the appellant's advocate, for it was almost impossible for the appellant's advocate to re-examine the witness and clear up any difficulties. In that case the reports obtained under statutory power appeared nowhere in the record of the deputy commissioner's file. Lord Guest at page 60 said :-

"The deputy commissioner in fulfilling his duties under the Act occupies an anomalous position. In his position as a member of the executive he regulates the investigation into the matters into which he considers it his duty to inquire and as an officer of state he must take such steps as he thinks necessary to ascertain the truth. When conducting an inquiry under section 10, 13 or 14 he is acting in a semi-judicial capacity. In this capacity he is bound to observe the principles of natural justice (s. 15(4)). In view of his dual position his responsibility is increased to avoid any conduct which is contrary to the rules of natural justice. These principles have often been defined and it is only necessary to state that they require that the party should be given fair notice of the case made against him and that he should be given adequate opportunity at the proper time to meet the case against him (*Ridge* v. *Baldwin* [1964] A.C. 40."

It is, therefore, distinguishable from the present case where the applicant knew of the existence of all documents and reports.

The learned trial Judge relied to a great extent on the case of *Kanda* v. *Government of the Federation of Malaya* (*supra*). It is, therefore, necessary and useful to examine this case closely.

It is a case where it was held that the failure to supply the appellant with a copy of the report of the Board of Inquiry which contained matters highly prejudicial to him and which had been sent to and read by the adjudicating officer, before he sat to inquire into the charge, amounted to a failure to afford the appellant "a reasonable opportunity of being heard" in answer to the charge within the meaning of Article 135.2 of the Constitution of Malaya and to denial of natural justice.

The disciplinary proceedings against the appellant Kanda were the sequel of criminal prosecution, which failed on the ground that false evidence had been given by a number of witnesses. The Commissioner of Police ordered an inquiry to be held. The Board of Inquiry was presided over by their senior police officer, a Mr. Yates. It reported that false evidence had been fabricated

for use at the trial. After considering the report, the Commissioner of Police decided that disciplinary proceedings should be taken against Inspector Kanda under what the Police Regulations call "Orderly Room Procedure". The Commissioner appointed Mr. Strathairn to be the adjudicating officer to inquire into the charges, an officer junior to Mr. Yates. Mr. Yates drafted a Specimen charge, but Mr. Strathairn preferred his own. He drafted another. The charges were heard by Mr. Strathairn who found Kanda guilty of the charge of failing to disclose evidence and recommended that he be dismissed from the Force. Inspector Kanda never had any knowledge of the contents of the report until about the 4th day of the trial of the action brought by him to annul his dismissal, that is to say, long after the conclusion of the hearing of the charges by the adjudicating officer and his dismissal. The adjudicating officer was in fact carrying out the duties of both judge and prosecuting counsel. He was really conducting an investigation and was necessarily supplied with all the material which would be available to prosecuting counsel. It was inevitable on account of the procedure laid down in the Regulations.

The following passage from the judgment of Lord Denning page 335 of the report is very helpful to show the point that I am trying to make :-

> "The report of the board of inquiry contained a severe condemnation of inspector Kanda. It was sent to the adjudicating officer before he sat to inquire into the charge. He read it and had full knowledge of its contents. But inspector Kanda never had it. He never had an opportunity of dealing with it. Indeed, he never got it until the fourth day of the hearing of this action, when this took place between the judge and the legal adviser to the Government."

It was after the following exchange took place as appearing at page 336 of the judgment that the report was made available to Inspector Kanda and his advisers :-

> "The Court to legal adviser : Am of the opinion that in the interests of justice the findings of the board of inquiry ought to be made available to the

court and to the plaintiff and privilege waived thereon....

Legal adviser: Must be some misunderstanding—they have always been available—and no privilege claimed thereon.

Court: It is my clear impression that both in court and throughout earlier proceedings in chambers, privilege has been consistently claimed in respect of the board of inquiry file and the findings thereon."

Lord Denning further states at p. 336:-

"The question is whether the hearing by the adjudicating officer was vitiated by his being furnished with that report without inspector Kanda being given any opportunity of correcting or contradicting it. Much of the argument before their Lordships and, indeed, before the courts in Malaya proceeded on the footing that this depended on this further question: Was there a 'real likelihood of bias', that is, 'an operative prejudice, whether conscious or unconscious', on the part of the adjudicating officer, Mr. Strathairn, against inspector Kanda?"

The point, therefore, in the *Kanda* case—as appears from the passage also quoted by the learned trial Judge—was that the judge or whoever has to adjudicate, must not hear evidence or receive representation from one side behind the back of the other. Lord Denning proceeded further at page 338 and said:-

"Applying these principles, their Lordships are of opinion that inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in agreement with the view expressed by Rigby J. in these words: 'In my view the furnishing of a copy of the board of inquiry to the adjudicating officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such denial of natural justice as to entitle this court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in

answer to the charge preferred against him which resulted in his dismissal'. The mistake of the police authorities was made entirely in good faith. It was quite proper to let the adjudicating officer have the statements of the witnesses. The Regulations show that it is necessary for him to have them. He will then read those out in the presence of the accused. But their Lordships do not think it was correct to let him have the report of the board of inquiry unless the accused also had it so as to be able to correct or contradict the statements in it to his prejudice."

Another factor which distinguishes the case under consideration from the *Kanda* case is that under the Police Regulations it was necessary for the adjudicating officer to have these statements, to enable him properly to conduct the inquiry. In the Malay Police Regulations, 1952 which can be found in Subsidiary Legislation Federal under L.N. 639 and after the marginal note "Orderly Room Procedure" one may find Regulation (4) reads:-

> "If the accused pleads not guilty or refuses to plead, the *adjudicating officer shall examine the witnesses in support of the charge* and their evidence shall be recorded. The accused shall be invited to cross-examine such witnesses and examine any documentary evidence. A witness may be re-examined on matters arising out of any cross-examination."

So, the predominantly distinguishing feature of the *Kanda* case, was that privilege had been consistently claimed in respect of the board of inquiry file and the proceedings thereon, whereas in the case under consideration, although it occurred to the applicant to ask for the reports, on legal advice he refrained in doing so; another factor that distinguishes the *Kanda* case from the case under consideration is that the prosecution as provided by law, was of an accusatorial nature, that is to say, conducted by a prosecuting officer and not by the Public Service Commission as the case was with the adjudicating officer in the Kanda case, but with this aspect of the proceedings under our Law, I shall have

to say a few words when I deal with the ground of annulment for lack of due inquiry.

A useful reference to the Kanda case is being made by Lord Denning M.R., himself, in *Regina* v. *Gaming Board for Great Britain, Ex part Benaim and Khaida* reported in [1970] 2 W.L.R. p. 1009 where at page 1016, in dealing with counsel's argument, he said :-

"He relied on some words of mine in *Kanda* v. *Government of Malaya* [1962] A.C. 322, 337 when I said 'that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other'."

I use this passage to show that *Kanda's* case was one where the report was considered as having been made use of behind the back of the other side.

I do not think that for the purposes of this appeal I should embark upon an analysis of the French authorities and the position of the law therein stated, since one may arrive at a conclusion in this case without further assistance.

I am of the opinion that the judicial pronouncements hereinabove set out governing the application of the rules of natural justice are applicable to the facts and circumstances of this case, subject to the well settled principles to be found in numerous decisions of this Court and the then Supreme Constitutional Court. These principles are aptly summed up in the case of *Morsis* and *The Republic*, 4 R.S.C.C., 133, at p. 137 with reference to previous decisions as follows :-

> "This Court has already held 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, because dismissal by the Commission is a matter of public law and not of private law' (vide *Andreas A. Marcoullides* and *The Republic, (Public Service Commission)* 3 R.S.C.C., p. 30 at p. 35) : that the rules of natural justice 'which also under Article 12 are made applicable to offences in general, should be ahdered to in all cases of disciplinary control in the domain of public

law' and that the procedure applicable in the particular matter must be applied subject to the said rules (vide *Nicolaos D. Haros* and *The Republic* (Minister of the Interior), 4 R.S.C.C. p. 39 at p. 44); that 'strict adherence to the principle concerned is most essential, inspite of the fact that such a course may occasionally result in causing some delay and that the reasons for dismissing a public officer may sometimes be, *prima facie*, so overwhelming as to render it improbable that anything will be forthcoming from him which would render his dismissal unnecessary', (vide *Maro N. Pantelidou* and *The Republic (Public Service Commission)*, 4 R.S.C.C. 100 at p. 106."

Since the aforesaid judicial pronouncement, the Public Service Law has been enacted. It lays down a procedure which takes cognizance of the aforesaid principles of law and which affords to a civil servant every safeguard of procedural fairness. In fact, it ensures that the civil servant is not only afforded an opportunity to know the case against him throughout the hearing of the case, but also at the preliminary stage of its investigation by an investigating officer. It introduces the accusatorial system followed in criminal proceedings in our country for almost a century and which has come to be cherished and respected as a corner stone of fairness.

The absence of a specific provision of what to do with the reports of the investigating officer and the documents attached thereto sent to the Commission under section 82(1), has not let to any abuse of their existence to the prejudice of the applicant. They were rightly used, in the sense of having available and easily accessible to either side all documents throughout the conduct of the proceedings.

This procedure does not offend against the sense of justice in a way that would compel this Court empowered as it is by the provisions of the Constitution, to imply and read into the Regulations governing the disciplinary proceedings under Law 33/67 an obligation to serve without being asked, copies of the reports and other documents. I am afraid that, with respect to the learned

trial Judge, I cannot agree with his approach to the matter under consideration.

This approach finds support in the opinion of Lord Hailsham and Viscount Dilhorne in *Pearlberg* v. *Varty (Inspector of Taxes)* hereinabove referred to.

Courts have to *exhibit* caution when interpreting statutes and avoid reading into them provisions that are not found in the context in which statutes were passed. This caution is echoed in the judgment of our Supreme Court when dealing with the principles for the determination of the unconstitutionality of statutes.

In the case of *The Board for Registration of Architects and Civil Engineers* v. *Christodoulos Kyriakides* (1966) 3 C.L.R. p. 640 where, following American decisions, it was held that a rule of precautionary nature is that no act of legislation will be declared void, except in a very clear case or unless the act is unconstitutional beyond all reasonable doubt. By analogy, this principle applies to the case before us, where the issue is whether anything else had to be done other than what was expressly provided, and supplement those provisions thereby, in order to consider them as not offending the rules of natural justice.

Next, I would like to deal with one more point regarding this issue. The learned trial Judge acted apparently on the assertion that the Commission did not read or make use of the contents of the documents complained of, but went further and said the following :-

> "Counsel for the respondent has stated to the Court that in actual fact the Commission did not take into account, for the purpose of the disciplinary process in question, anything other than the oral evidence given and the documentary *exhibits* produced during the hearing before it, in the applicant's and his counsel's presence. But the fact remains that the material which was forwarded to the Commission, as aforesaid, prior to the enactment of Law 33/67, and later, by virtue of section 82(1) of such Law, was available to all its members and the possibility cannot be reasonably excluded that one or more of its members became influenced

by it, through perusing, even at some preliminary stage, such material; moreover, the applicant was handicapped, in the effective exercise of his rights to be heard in defence of himself, through the non-availability to him, at all stages before his disciplinary conviction, of the said material; and, though I have said so earlier, I ought perhaps to stress, by repeating it, that when the application of the rules of natural justice is involved the mere risk of prejudice, due to their not having been duly complied with, is sufficient to lead to the annulment of a decision reached in a manner vitiated by such non-compliance (see, *inter alia,* the *Annamunthodo* and *Kanda* cases, *supra*).

I again find myself in the position of disagreeing with the aforesaid proposition, as the statement of Lord Denning in the *Kanda* case that "the Court will not go into the likelihood of prejudice, and that the risk is enough" is applicable to the cases where it has been established that the tribunal or other organ exercising disciplinary proceedings has come to know of the contents of the documents as to which complaint is made and not to the case where the tribunal or other appropriate organ has not had any knowledge of the contents but only of the existence of such documents.

I proceed now to examine the second sub-head of the first ground of anulment, namely that "disciplinary proceedings against the applicant were conducted in a manner which was inconsistent with the combined effect of the already referred to section 82(1) of Law 33/67 and Regulation 3 of Part II of the Second Schedule of the same Law. The learned trial Judge has said the following :-

> "I have not known of any summary trial of a criminal case at which there was anything placed before the judge trying such case without it being, too, within the knowledge of the accused person and his counsel; and yet this is what has happened on this occasion, in the sense that the evidence in support of the charges brought against the applicant, which was forwarded to the respondent Commission in compliance with section 82(1) of Law

33/67, as well as the reports of the two investigating officers, which were likewise forwarded to the Commission, were before the Commission *but not* within the knowledge of the applicant and his counsel. In my view the proper course for the Commission was to make such evidence which consisted of the written statements of various persons and of documentary *exhibits*, part of the record of the hearing before it, because it was forwarded to it in that connection (and under regulation 4(c) in Part III of the Second Schedule to Law 33/67 it could admit evidence which would be 'inadmissible in civil or criminal proceedings'); it being understood, of course, that it was open to the Commission to decide, either of its own motion or at the request of a party before it, that any of the said persons should be called to give oral evidence, too, during the hearing before the Commission. Moreover, the reports of the two investigating officers ought to have been made available to applicant and his counsel (not only, as stated earlier in this judgment, as a matter of natural justice, in the circumstances of this case) but, also as a matter of law—the said section 82(1) and regulation 3—once they had been forwarded to the Commission by the complainant Ministry in relation to the disciplinary proceedings before it, and they were available both to its members and to counsel appearing for such Ministry.

Thus, irrespective of any non-compliance with the *audi alteram partem* rule of natural justice, the Commission's decision was reached contrary to the object and effect of the relevant provisions of Law 33/67."

Everything that was forwarded to the Commission was forwarded in compliance with a statutory provision. That provision precedes that laying down that the hearing of the case shall proceed, as nearly as may be, in the same manner as the hearing of a criminal case in a summary trial. The applicant and his counsel had full knowledge of the fact that the documents in question had been sent to the Commission, inasmuch as they even made use of some of them as *exhibits* and reference was made

by counsel to one of the reports. I am afraid I do not agree with the proposition that the Commission had to make the said documents part of the record merely because in regulation 4(c) in Part III of the Second Schedule to the Law, there is a relaxation of the rules against hearsay. Such a provision governing questions of evidence cannot, by implication, be considered as changing the nature of the procedure envisaged by regulation 3 of Part III of the Second Schedule to the Law. The provisions of regulation 4 of the same Part, lay down the legal powers of the Committee and do not place on the Committee the duty of, in the first place, deciding which witness to call or not. The system is accusatorial and not inquisitorial. The case in support of the charges is conducted as in criminal summary trials by a prosecuting counsel, in the present instance by a Senior Counsel for the Republic. He naturally made use of the material collected by the investigating officer. This is not in any way an unfair advantage. In order to counterbalance this advantage, the officer is given the right to be represented during the proceedings before the Commission by counsel of his own choice (section 82(4)), thus the right to be heard is effectively discharged by combining this right with the right to be represented by counsel. The prosecuting counsel decides as to which witnesses will be called or not. The Commission does not have to make as part of the record the said documents. It sits as an arbiter of the two contesting parties and adjudicates upon the material that is thought fit to be adduced in support of the case of either side. If the material contained in the documents forwarded to the Commission under section 82(1) were to be made part of the record, the whole character of the accusatorial system of proceedings would be altered. With due respect I do not find that there is any provision in the Law that has been violated by the manner in which the Commission's decision was reached, as found by the learned trial Judge.

It was considered that the fact that the applicant and his counsel did not request that the said material be made available to them in relation to the hearing before the Commission was not a factor which could prevent the annulment of the *sub judice* decision. If a person deli-

berately abstains from taking advantage of an opportunity to be heard or even taking advantage of asking for inspection of a document which for all intents and purposes was within his knowledge available, the rule has not been broken. If in France (see Silvera "La fonction publique et ses problemes Actuels" p. 398, para 368. (C.E. 38 Juil 1952, Huguet) and Odent Contentieux Administratif, 2nd Ed. p. 615), where there is express provision that documents should be served on the officer, neglect on his part to ask for them when they were not so served, was found not to constitute a ground for annulling the decision reached thereafter, a fortiori this should be so when there is no statutory obligation to serve copies of these documents on the applicant. In my judgment, there is no reason to interfere with the decision of the Commission. This is not a case where there has in fact been a breach of a rule which, however, has not caused any injustice, but rather a case where there has been no breach of any rule whatsoever.

The second ground of law, again divided into two parts, relied upon by the learned trial Judge in order to annul the decision, was that it was, to put it shortly, reached without due inquiry.

The first leg of this finding was based on the statement that the Commission did not study for the purposes of the disciplinary process against the applicant the reports of the two investigating officers and the documents attached thereto.

It was conceded by counsel for the appellant before the learned trial Judge that the Commission ought to have studied the documents. but he argued that its failure to do so did not materially affect the said process. The Judge did not accept this point as a valid one, because he considered that the study of the said report might have led the Commission to decide that there was need to inquire further into any material aspect of the case before it. At the hearing of the appeal learned counsel for the Commission stated that his argument that the Commission ought to have studied these documents, was wrong. His approach was only an indication of the seriousness and the meticulous manner with which he argued this case, a really long and difficult one. I

do not think for a moment and I have already given my reasons, why the Commission should not have read those reports and documents. It is of the essence of the accusatorial system which is followed under this Law, that the Judge should confine himself to those facts and circumstances that the parties elect to present, subject of course to the right to recall witnesses or call any witnesses that he may feel the justice of the case will require. But this should be done from what transpires before him in the disciplinary process and not from information derived from other sources; and also subject to the general principles of our criminal procedure as to the circumstances in which such a power will be exercised by a court of law.

The second leg is to be found in the conclusion of the learned trial Judge that the Commission's inquiry could not in any case be treated as having been a due one, because by not making available to the applicant all the material which was before it, the Commission deprived itself of the opportunity of having before it as complete explanations as the applicant could have given in trying to exculpate himself had he known of all such material. In my view, all the material that was available to the Commission was equally available to the applicant in the circumstances that have already been explained, so it cannot be said that the Commission by not supplying copies of the documents on its own initiative or advising him to make use of them, have failed in any way to carry out a proper inquiry. The case of *Iordanou and the Republic* (1967) 3 C.L.R. 245, should be distinguished from this case, as being a case of lack of due inquiry in the case of a transfer of a civil servant, where no adequate opportunity to meet the allegations made against his conduct was given to him and the applicant in that case was never informed of the contents of the documents which were placed before the Commission and which were treated by it as proving lack of co-operation. I underline the word treated, because those documents in that case were the evidence upon which the Commission acted, whereas in the present case the Commission did not act at all on these documents.

The inquisitorial system which is usually followed in inquiries in administrative law, has been departed from

by specific provisions of the Public Service Law which lay down the procedure which should be followed in carrying out what the law itself considers as due inquiry. It is in the absence of specific statutory provisions regulating the procedure to be followed for the purpose of carrying out a due inquiry that an administrative organ may regulate its own proceedings. It has been said that this Court should proceed to find if there has been any material fact missing through lack of inquiry. I do not think that we should go into that matter, as I find that there has been no lack of due inquiry, but in any event, what was substantially in the reports and the documents attached thereto under section 82(1) of the Law to the Commission, was adduced as evidence or adopted as argument in the hearing. Therefore, it cannot be said that there has been, on the facts of the case, lack of due inquiry. The case of *Fox* v. *General Medical Council* [1960] 3 All E.R. p. 225 referred to by the learned trial Judge should be distinguished, because in that case evidence was tendered and rejected, hence the lack of due inquiry.

For all the above reasons, I would allow the appeal.

CROSS APPEAL.

The learned trial Judge disposed of a number of points by his "Decision on preliminary issues" on the 23rd August 1969 (reported in (1969) 3 C.L.R. 396). Having by his judgment disposed of other issues raised by the applicant he felt that, in view of his conclusions whereby the *sub judice* decision of the Commission was declared null and void and of no effect whatsoever for the reasons which have become the subject matter of the appeal, he did not have to and he should not decide any of the remaining issues raised in the case; and by his cross-appeal the applicant complains of what he calls, the failure of the trial Judge to adjudicate on all legal points raised by him.

It has been the practice of Judges of this Court trying in the first instance administrative recourses, not to consider and determine all issues raised by such recourse, when the determination of certain of the issues raised leads to annulment. There are a number of factors militating in favour of such a course. The first one

emanates from the principle enunciated in the case of *Georghios Markou & Another* v. *The Republic* (1968) 3 C.L.R. 166, where it was held by a majority that once a decision of an administrative organ has been declared null and void, there can be no appeal against those parts of the annulling decision which are not favourable to the successful applicant. The reasoning behind this view was that when an act or decision is annulled, the administration has a duty to re-examine the matter and there will be a fresh act or decision which the person concerned will be entitled to challenge afresh.

The second factor is that once the *sub judice* act or decision is annulled on any ground of law that the trial judge considers necessary to determine by his judgment, the annulling Court should naturally show restraint in adjudicating upon matters on which there cannot be an appeal by the successful litigant and which may unduly influence the administration in the re-examination of the matter complained of.

A third factor stems from the very set up of this Court. Its member judges hear cases in the first instance under section 11(2) of the Administration of Justice (Miscellaneous Provisions) Law, 33/64. If they pronounce on matters that cannot be the subject of appeal because the unsuccessful party agrees with the ground upon which the decision was annulled, matters will be said as obiter and judges found to have been committed to views which could not be challenged on appeal.

The applicant's complaint is that if not all points raised are determined, there is no adjudication and the Court does not exhaust all its jurisdiction; so, a litigant is deprived of the right of access to the Court.

The applicant, however, went further and referred to a passage from Waline Droit Administratif, 9th Edition, 1963 paras. 783 and 784, where it is stated that "the administrative judge examines in every case first, the existence of the facts or the circumstances which are referred to in support of the decision..." This passage has been used in support of his argument that the learned trial Judge had a duty to examine whether the facts of the case before the Commission warranted their finding the applicant guilty of the disciplinary offences with

which he was charged, and he referred us to Debbasch and Pinet's Les Grands Textes Administratifs, 1970, pp. 600 - 601 from which it appears that when a recourse asks for the annulment of an act for reasons of both internal and external legality the practice of the Council of State nowadays is to examine first the reasons of the internal legality and see if they are well founded in order to adopt them in preference to the external grounds, because the annulment on the latter grounds does not prevent the administration from repeating the annulled act under a legal form. I do not see why the practice followed by the learned trial Judge should be changed in order to comply with the practice of another Court. The matter should be left to the discretion of the trial Judge to decide on which grounds he will proceed to annul an act or decision, depending on the circumstances of each particular case.

The Greek Council of State follows the same practice and it has been held repeatedly that the remaining grounds of annulment are not examined so long as the *sub judice* act is annulled for one ground considered as founded and the examination of the remaining reasons is considered that it is not necessary as serving no useful purpose. (See Conclusions of Case Law of the Greek Council of State, 1929 - 1959, p. 271 and Decisions, 1553/69, 1969/69, 2099/69, 2168/69, 2169/69, 2656/69 and 2982/69).

In my judgment, the trial Judge in the present case very rightly, refrained from pronouncing on the existence or not of facts, in view of the fact that the case inevitably had to be re-examined by the Commission and, therefore, nothing should have been said to anticipate their own assessment of the factual aspect of the case, particularly since here the applicant does not confine his argument to the existence or not of facts, but goes further and asks that the Court should pronounce on the probative effect of the evidence before the Commission.

The principle in the *Markou* case (*supra*) should, therefore, be distinguished, because the examination of the matters left undetermined by the learned trial Judge, necessitates their examination in view of the outcome of this appeal.

This Court, when hearing an appeal from a judgment of one of its members, approaches the matter as a complete re-examination of the case, with due regard to the issues raised by the parties on appeal, or to the extent that they have been left undetermined by the trial Judge or in case of a successful appeal in addition to the above, to the extent of the cross-appeal.

This brings me to the first ground which the Court has to determine, which is, whether the decision of the Commission was duly reasoned or not.

There is no dispute that a disciplinary decision has to be duly reasoned both as regard its factual and its legal aspect. The reasoning, in this instance, is specifically required under the Law and, in particular, Regulation 7 of Part III of the Second Schedule to the Law, which, in so far as relevant, reads —

> "7. Any judgment of the Commission shall give reasons for the decision taken..."

The requirement of due reasoning in administrative decisions, has been stressed on more than one occasion by judgments of this Court (See *inter alia, P.E.O.* v. *The Board of Cinematograph Films Censors & Another* (1965) 3 C.L.R. 27 and *Sofocleous (No. 1)* v. *The Republic* (reported in this Part at p. 56, *ante*, at p. 60)). The philosophy behind the requirement of reasoning is that its presence excludes arbitrariness on the part of the administrative organ and protects the administration against itself by preventing it from taking a hasty decision. At the same time it protects the persons affected by such decision. The reasoning must be clear, that is to say, the concrete factors upon which the administration based its decision for the occasion under consideration must be specifically mentioned in such a manner as to render possible its judicial control. It must contain the way of thinking of the administrative organ on the relevant facts which constitute the foundation for the decision. A reasoning which does not satisfy these conditions cannot be considered as due reasoning.

This requirement for due reasoning is satisfied by a disciplinary decision, setting out that it took into consideration all documents in the file and the factors that

emanate from the administrative investigation and the allegations of the disciplined officer contained in his defence. Support to this proposition can be found in the Decisions of the Greek Council of State 804/47, 2020/39, 2044/52 and 2045/52. See also Zacharopoulos Digest on Case Law, 1935, Vol. 1 p. 719, paragraphs 2130, 2131 and 2132.

I am satisfied that the decision of the Commission is duly reasoned in accordance with the requirements of the Law and the general principles of Administrative Law hereinabove set out.

The applicant, however, has not confined his argument about lack of due reasoning to the alleged absence of reasoning, but proceeded further and argued that the conclusions reached by the Commission regarding the existence of certain facts were not supported by the evidence adduced before them. This was a twofold argument:- First, that the probative effect of the evidential material was wrongly weighed; secondly, that facts were found to exist, which did not really exist.

I do not consider the alleged fault of the Commission's decision to be matter of reasoning; they are matters to be considered on a plea of error or misconception of fact. In support of this proposition, we have been referred, *inter alia*, to Garner, on Administrative Law, 1967, p. 121, under the Heading "Errors of Law" which reads as follows :-

> "In some cases a statute may make provision for an appeal to lie from a decision of an administrative agency, where the decision is susceptible of review on the 'merits' *i.e.* the reviewing court will be entitled to put itself in the shoes of the agency as it were, and decide the matter afresh, taking both facts and law into account. This is, however, exceptional and exists only where a statute has expressly so provided. As a general principle the courts will, apart from the matters already discussed, only review an administrative decision of a judicial nature where there has been an error of law 'on the face of the record', or where such an error is clear and obvious."

It must not be forgotten that out administrative Law is not based on that obtaining in England. Even so, the passage cited is not in favour of the applicant because in this country constitutional or statutory rules do not enable a Judge in an application under Article 146 to step himself in the shoes of the administration and decide the matter afresh.

A distinction has to be drawn between an appeal and a recourse. In Greece, for example, there is the right of recourse, but in the case of public officers, there is a statutory provision giving right of appeal to the First Section of the Council of State, which, as it is stated in Kyriacopoulos, Greek Administrative Law, 4th Edition, Vol. 3, page 305—"The Council of State may arrive at a different appreciation of facts which are the foundation for the disciplinary liability". The fact that the Council of State determines the merits of the appeal, does not only emanate from section 34, paragraph (1) of Law No. 3713, but also from section 1, paragraph (6) of the Code of the Administrative Civil Servants which sets down the general rule by which—"in accordance with the said law in a recourse before the Council of State is determined by it and on its merits."

The legal principles governing the interference of an administrative Court with the determination of the actual basis of an administrative act or decision are aptly summed up in a number of decisions which can be found in the Digest of Decisions of the Greek Council of State for the years 1961 - 1963, Vol. A (A - N) p. 77 under the heading The Non Reviewability of Determination on the Merits :-

«Ἀνέλεγκτον οὐσιαστικῆς κρίσεως.

α) Γενικῶς

22. Ἀπορριπτέος ὡς ἀπαράδεκτος τυγχάνει λόγος ἀκυρώσεως πλήττων τὴν ὀρθότητα τῆς ἀναγομένης εἰς ἐκτίμησιν πραγμάτων κρίσεως τῆς Διοικήσεως. 80, 81 362/61. 339, 930, 953, 1412, 1720—2, 1778/62 7, 165, 443, 1659, 1861/63».

«23.... ἡ ἀμφισβητῶν τὴν οὐσιαστικὴν κρίσιν αὐτῆς. 1480, 2157/61. 1112, 1664, 1778/62, 1659, 2206/63.

24.... ἐφ' ὅσον δὲν ἀποδεικνύεται αὕτη ὡς προϊὸν πλάνης περὶ τὰ πράγματα. 894, 1112, 1412, 2168/62, 1861/63.

25.... ὑπερβάσεως τῶν ἀκραίων ὁρίων τῆς διακριτικῆς ἐξουσίας τῆς Διοικήσεως. 16, 2157/61, 1412/62.

26.... ὡς ἐπὶ ἐκτιμήσεως ἐγγράφων, ἥτις ἀνάγεται εἰς τὴν διακριτικὴν ἐξουσίαν τῆς Διοικήσεως. 899, 900/61, 2044/62.

27.... Λόγος ἀκυρώσεως περὶ ἀνεπαρκείας καὶ πλάνης τῆς αἰτιολογίας, τῆς προσβαλλομένης πράξεως πλήττων τὴν πραγματικὴν ἐκτίμησιν, ἣν ἐνήργησεν ἡ Διοίκησις χωρὶς νὰ ὑπερβῇ τὰ ἀκραῖα ὅρια τῆς διακριτικῆς αὐτῆς ἐξουσίας, τυγχάνει ἀπορριπτέος ὡς ἀπαράδεκτος 1777/61, 1417/62».

("The non-reviewability of Determination on the Merits :-

22. The ground for annulment directed against the administration's determination of the facts is rejected as unacceptable. 80, 81, 362/61, 339, 930, 953, 1412, 1720—2,1778/62, 7,165, 443, 1659, 1861/63.

23.... or questioning its determination on the merits. 1480, 2157/61, 1112, 1664, 1778/62, 1659, 2206/63.

24.... since same is not proved to be the product of a misconception of fact. 894, 1112, 1412, 2168/62, 1861/63.

25... or in excess of the extreme limits of the discretionary powers of the administration 16, 2157/61, 1412/62.

26. ...as to assessment of documents which falls within the discretionary power of the Administration. 899, 900/61, 2044/62.

27. ....The ground for annulment referring to the insufficiency and misconception of the reasoning of the act against which the recourse is directed and attacking the determination of the facts made by the administration without exceeding the extreme

limits of its discretionary powers is rejected as unacceptable. 1777/61, 1417/62."

(See also Digest of Decisions of the Greek Council of State, for the year 1968, p. 41 and for the year 1969, p. 245). Incidentally this last decision (para. 27 above) supports my view as to the nature of the applicant's argument under consideration.

The question of misconception of fact is also summed up as follows in the Conclusions of the Case Law of the Greek Council of State (1929 - 1959), p. 268 :-

«Διὰ τὴν ὕπαρξιν πλάνης περὶ τὰ πράγματα ἀπαιτεῖται ἀντικειμενικὴ ἀνυπαρξία τῶν ἐφ' ὧν ἡ πρᾶξις ἐρείδεται πραγματικῶν περιστατικῶν καὶ προϋποθέσεων : 2134(52), διαπιστουμένη ἄνευ τοῦ στοιχείου τῆς ὑποκειμενικῆς κρίσεως : 1089(46). Δὲν ὑφίσταται πλάνη περὶ τὰ πράγματα ὁσάκις ἡ Διοίκησις ἐκτιμᾶ κατ' οὐσίαν διάφορα, καὶ ἀντιφατικὰ στοιχεῖα ὧν ἡ στάθμισις δύναται κατ' ἀρχὴν νὰ ὁδηγῇ καὶ εἰς τὸ συμπέρασμα εἰς ὃ ἤχθη ἡ Διοίκησις. Τοιαύτη ἐκτίμησις δὲν ἐλέγχεται κατ' οὐσίαν ἐν τῇ ἀκυρωτικῇ δίκη. (βλ. καὶ 1474(56))».

("For the existence of a misconception of fact there is required an objective non-existence of the actual circumstances and prerequisites upon which the act is based (2134/52) which is ascertained in the absence of the element of the subjective test: 1089/46. There does not exist a misconception of fact when the administration determines items which in substance are different and conflicting; whose determination may in principle lead to the conclusion arrived at by the administration. The substance of such determination is not controlled in the annulment trial (see also 1474/56)."

In Zacharopoulos's Digest of Case Law 1935 - 1952 Vol. 1 at p. 41, paragraph 251 under the heading «Ἀνέλεγκτον Οὐσιαστικῆς Κρίσεως», (Non reviewability of determination on the merits), it is stated that the administration's assessment of facts is not subject to judicial control by the Council of State on a recourse for annulment and numerous decisions of the Greek Council of State are cited in support of that proposition.

In the present case extensive argument was heard regarding the existence or not of facts or the reasonableness of the inferences drawn therefrom. For the reasons given, I do not find it necessary to go into the details of the evidence. It is enough to say that there was ample material before the Commission on which it was entitled to arrive at the conclusions that it did. It has been said repeatedly that this Court will not interfere and substitute its view in the place of that of the Commission, having itself (the Commission) weighed the probative effect of same and having correctly arrived at the conclusion that those facts and circumstances, as its duty was to consider, amounted to the disciplinary offences for which the applicant was found guilty.

As it is stated in Decision 1508/50 of the Greek Council of State —

«Τὰς πράξεις ταύτας τοῦ αἰτοῦντος διαπιστώσασα, κατὰ τὴν ἀνέλεγκτον κρίσιν της, ἡ προσβαλλομένη πρᾶξις καὶ χαρακτηρίσασα αὐτάς, ὡς συνιστώσας τὸ πειθαρχικὸν παράπτωμα τῆς παραβάσεως καθήκοντος καὶ τῆς ἀσυμβιβάστου πρὸς τὸ ἀξίωμα τοῦ δημοσίου ὑπαλλήλου διαγωγῆς, τυγχάνει νομίμως ἠτιολογημένη καὶ ἀπορριπτέος ἐλέγχεται ὁ περὶ ἀναιτιολογήτου προβαλλόμενος λόγος ἀκυρώσεως.

Ἐπειδὴ ἀβάσιμος τυγχάνει καὶ ὁ περὶ πλάνης περὶ τὰ πράγματα προβαλλόμενος λόγος ἀκυρώσεως, ἅτε μὴ βεβαιουμένης τῆς, ἣν ὁ αἰτῶν ἐπικαλεῖται, ἀντικειμενικῆς ἀνυπαρξίας τῶν ἐν τῇ προσβαλλομένῃ ἀποφάσει ἀναφερομένων πράξεων».

("Having ascertained these acts of the applicant according to its unfettered judgment and having described them as constituting the disciplinary offence of breach of duty and of conduct incompatible with the office of a public officer the act against which the recourse is directed is rendered legally reasoned and the ground of absence of reasoning which was put forward is thus rejected.

Whereas misconception of fact put forward as a ground of annulment is also groundless since the objective non-existence, cited by the applicant, of the acts referred to in the decision against which the recourse is directed has not been ascertained").

The next point for determination arises from the fact that the applicant by the *sub judice* decision was demoted from the rank of Ambassador to that of Counsellor Grade A, *i.e.* two steps.

The argument of the applicant in respect of this part of the Commission's decision is that it is contrary to Law as he could not have been demoted two steps at one and the same time. This argument was based on the Decision of the Greek Council of State No. 233/31. Such a proposition is not a matter of general principle of administrative Law and Greek Law turned on a special statutory provision. In Cyprus, one has to look at the wording of section 79(1) of the Public Service Law which, so far as material, reads as follows :-

«79.— (1) Αἱ ἀκόλουθοι πειθαρχικαὶ ποιναὶ δυνατὸν νὰ ἐπιβληθῶσι δυνάμει τῶν διατάξεων τοῦ παρόντος Νόμου :

(α)

(η) ὑποβιβασμὸς εἰς κατωτέραν θέσιν».

The English translation being this :-

("79(1) The following disciplinary punishments may be imposed under the provisions of this law :-

(a)

(h) Demotion to a lower post."

I lay stress on the absence of a definite article after the word demotion, as meaning that the demotion may be to any lower post not necessarily to the immediately lower one.

In my view, it was reasonably open to the Commission to find the applicant guilty of the four disciplinary

offences for which he was convicted. The applicant did not act on any misconception of fact, nor can it be said that it has been shown that such misconception is even probable.

In the circumstances, therefore, I would dismiss the cross-appeal and on the whole case I would make no order as to costs.

STAVRINIDES, J. :- I agree with both judgments and there is nothing I wish to add.

L. LOIZOU, J. :- I agree that the appeal should be allowed and the cross-appeal dismissed for the reasons given by A. Loizou, J. in his judgment which I had the advantage of reading in advance and to which I have nothing to add.

MALACHTOS, J. :- I also agree that the appeal should be allowed and the cross-appeal should be dismissed for the reasons given in the judgment just delivered by my brother Judge A. Loizou, which judgment I had the opportunity of reading in advance.

STAVRINIDES, J. :- In the result the appeal is allowed and the cross-appeal is dismissed. This means that the Commission's decision is restored. There will be no order as to costs.

Appeal allowed.
Cross-appeal dismissed.
No order as to costs.