1973
April 14
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KYPROS KYPRIANOU
v.
PUBLIC SERVICE COMMISSION

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

KYPROS KYPRIANOU,

Applicant,

and

THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 138/67).

Public Officers—Disciplinary proceedings—Disciplinary conviction—Disciplinary punishment—See infra, passim.

Disciplinary proceedings—Nature of—Not a trial by a Court but merely an inquiry by an administrative organ—It follows that, in the absence of any express provision to the contrary no oath need be administered to witnesses testifying in such proceedings.

Disciplinary proceedings—Witnesses—No oath need be administered—See supra.

Disciplinary proceedings—Before the Public Service Commission prior to the enactment of the Public Service Law, 1967 (Law No. 33 of 1967)—Proceedings preceded by a preliminary investigation in the Department concerned—Such preliminary investigation not a matter within the competence of the Public Service Commission under Article 125 of the Constitution—But a step preliminary to the exercise of such competence.

Disciplinary proceedings—Head of Department—Whether entitled to be present in the course of such proceedings and to question witnesses—And whether his presence raises a presumption of intimidation of his subordinates preventing them from telling the whole truth.

Disciplinary proceedings—Natural justice—Requirements of—Officer away from his office due to interdiction—Prevented from having access to official records needed for his defence—But no complaint to this effect during the

proceedings—And no request on his part for records to be made available to him ever refused—In the circumstances of this case the hearing afforded to him was a full and fair one—And no requirement of natural justice has been contravened.

Disciplinary proceedings—Punishment—Disciplinary punishment of compulsory retirement from the service—Officer not heard in mitigation after his disciplinary conviction and before punishment was imposed—Respondent's decision regarding punishment annulled on that ground as having been reached through a defective exercise of its relevant discretionary powers.

Disciplinary punishment—See immediately hereabove—See also further immediately herebelow.

Disciplinary punishment—Compulsory retirement from service—Imposed by the Public Service Commission by a purported majority of 3 to 2—Annulled—Because of a material irregularity, in that a majority was assumed to exist for a final decision to be taken at that time whereas in fact no such majority existed yet.

Disciplinary punishment—Disciplinary compulsory retirement from service with pension rights—Imposed by the respondent Public Service Commission prior to the enactment of the Public Service Law, 1967—Annulled—As the respondent Commission at that time could only terminate the officer's services and then recommend to the appropriate organ the grant to him of pension under the Pensions Law, Cap. 311.

Disciplinary conviction—Recourse against such conviction under Article 146 of the Constitution—Powers of the Administrative Court (the Supreme Court) in dealing with such recourse—The Court cannot interfere with the subjective evaluation of the relevant facts by the appropriate disciplinary organ—Disciplinary conviction reasonably open to the respondent Public Service Commission.

Recourse under Article 146 of the Constitution—Against a disciplinary conviction—Powers of the Supreme Court—See immediately hereabove.

Competence—Transfer of—Competence vested in a particular

organ cannot be transferred to another organ if there does not exist express legislative authorisation for such course.

Transfer of competence—See immediately hereabove.

Natural justice—The requirements of natural justice must depend on the circumstances of each particular case—No words exist which are of universal application to every kind of domestic inquiry and every kind of domestic tribunal.

Witnesses—Oath—Need not to be administered in disciplinary proceedings.

By this recourse under Article 146 of the Constitution, the applicant, who is a public officer in the service of the Ministry of Finance, is challenging the decision of the respondent Public Service Commission whereby as a result of disciplinary proceedings they found him guilty of certain disciplinary offences and imposed on him the disciplinary punishment of compulsory retirement from the service with full pension rights.

It was argued on behalf of the applicant that there have been certain irregularities vitiating the *sub judice* decision both as regards conviction and punishment. The learned President of the Supreme Court, rejecting the submissions made by counsel for the applicant relating to the conviction, but upholding his main argument as regards the punishment, annulled partly the *sub judice* decision *viz.* only that part thereof concerning punishment.

Held, I : *(Upholding the conviction of the applicant) :*

(1) It is true that in this case a preliminary investigation was carried out in the Department concerned by, or on the instructions of the Head of such Department; but this investigation is a matter outside the competence of the Public Service Commission under Article 125 of the Constitution, being merely a preliminary step to the exercise by the Commission of such competence. Consequently the submission made by counsel for the applicant that there has been in this case an illegal transfer of competence cannot be sustained; in fact no transfer of competence occurred in this case at all.

(2)(A) A complaint was made by counsel for the applicant that the Head of the Inland Revenue Department, Mr. N. Ionides, who reported the applicant to the Commission, and who was also a complainant regarding applicant's conduct affecting him directly, appeared before the respondent said Commission during the disciplinary proceedings, not only as a witness, but, also, as a person who was putting questions to witnesses testifying before the Commission; and that the disciplinary trial was an unfair one because Mr. N. Ionides was present when witnesses, who were his subordinates in the Department, were giving evidence and, therefore, they could not feel entirely free to speak the whole truth and say things against the said Mr. Ionides.

(B) But, at no stage of the disciplinary proceedings was any objection raised by the applicant in connection with the presence of Mr. Ionides when officers subordinate to him were giving evidence; nor was any objection taken when Mr. Ionides was putting questions to witnesses. In the absence of any provision to the contrary and in view of the very complicated nature of the case (involving issues requiring specialized knowledge) it was not, in my opinion, wrong for the respondent Commission to allow Mr. Ionides to question witnesses and be present at the proceedings as aforesaid.

(3) In the light of the foregoing I am of the view that no irregularity occurred because of anything done by Mr. Ionides in connection with the disciplinary process against the applicant; even if it were to be assumed that anything complained of in this respect by the applicant amounted to an irregularity, there is definitely no doubt in my mind that such irregularity was not of a material nature; and it has been laid down by case-law that there are irregularities which are of a substantial nature and affect the validity of the relevant administrative process and that there are less serious, immaterial, irregularities which do

no affect such validity (see, in this respect, Traité Pratique de la Fonction Publique by Plantey, 3rd ed., Vol. A, p. 495, paragraph 1544, and Contentieux Administratif by Odent 1970/71, Vol. 5, p. 1446).

(4) In the absence of any express provision to the contrary no oath need be administered to witnesses testifying in disciplinary proceedings. As pointed out in *Enotiadou* v. *The Republic* (1971) 3 C.L.R. 409, at pp. 414 - 415, disciplinary proceedings are not a trial by a Court but merely an inquiry by an administrative organ.

(5) From the totality of the material before me there is nothing to suggest that, in fact, the applicant did not have a full and fair hearing before the respondent Public Service Commission or that any requirement of natural justice was contravened in the circumstances of this particular case. As observed by Tucker L.J. 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 domestic 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" (Dicta adopted in the *Republic* v. *Georghiades* (1972) 3 C.L.R. 594, at pp. 614 and 661).

(6)(A) As has been pointed out in the *Enotiadou* case (*supra*) it is well settled that an administrative Court in dealing with a recourse made against a disciplinary conviction cannot interfere with the subjective evaluation of the relevant facts made by the appropriate organ (see, also, the decisions of the Greek Council of State in cases Nos. 2654/1965 and 1129/1966).

(B) On the material before me I am quite satisfied that the verdict that the applicant was guilty as charged, reached unanimously by the members of the respondent Commission, was reasonably

open to them and should not be interfered with by this Court.

Held, II. (*Setting aside the disciplinary punishment imposed on the applicant*):

(1) The applicant ought to have been heard by the respondent Commission in mitigation after he had been found guilty of the disciplinary charges and before any punishment was imposed on him. This was not done; and, in my view, in the circumstances of this case the decision of the respondent has to be annulled to the extent to which it relates to the punishment.

(2) A second reason for which I have formed the view that the part of the Commission's decision which relates to the punishment should be annulled is the fact that there does not appear to have existed actually a majority in favour of such punishment.

(3) A further ground is that the respondent Commission was not competent, at the time, to terminate the applicant's services with preservation of his pension rights. At the time, the Commission could only terminate the services of the applicant and then recommend to the appropriate organ under the Pensions Law, Cap. 311, the grant to him of a pension; and if the Commission knew that it could only terminate the services of the applicant and that it would be to another organ to decide whether or not to grant him a pension it is quite probable that it might not have decided to terminate his services.

Recourse successful in part as aforesaid. No order as to costs.

Cases referred to:

Enotiadou v. *The Republic* (1971) 3 C.L.R. 409, at pp. 414 - 415;

Perepolkin v. *Superintendent of Child Welfare* [1957] 11 D.L.R. (2nd) 245; English and Empire Digest Volume 28 (1959) at p. 721, paragraph 1165;

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

The Republic v. *Georghiades* (1972) 3 C.L.R. 594, at pp. 614 and 661;

Furnell v. *Whangarei High Schools Board* [1973] 1 All E.R. 400, at p. 412;

Fysentzides v. *The Republic* (1971) 3 C.L.R. 80;

Markoullides and *The Republic*, 3 R.S.C.C. 30;

Papaleontiou v. *The Republic* (1967) 3 C.L.R. 624;

Lyssiotou v. *The Republic* (1968) 3 C.L.R. 173;

Decisions of the Greek Council of State in Cases: Nos. 745/1932, 367/1933, 2654/1965 and 1129/1966.

Recourse.

Recourse against the validity of the decision of the respondent whereby applicant was found guilty of disciplinary offences and was compulsorily retired from the public service.

L. Papaphilippou with *A. Neocleous*, for the applicant.

K. Talarides, while being Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :-

TRIANTAFYLLIDES, P.: By this recourse the applicant challenges the validity of the decision of the respondent Public Service Commission—communicated to him by letter dated the 9th May, 1967—by which he was found guilty of disciplinary offences and he was, as a result, retired compulsorily from the public service with effect as from the 1st June, 1967, with full pension rights for his service till then.

The applicant was a public officer since 1950 and at the time of the termination of his services, as above, he was a Principal Assessor in the Inland Revenue Department.

The course of the disciplinary proceedings against the applicant was as follows :-

The applicant was interdicted on the 19th September, 1966.

Then, by letter of the 17th December, 1966, he was informed by the respondent that complaints had been made against him regarding improper behaviour towards his Head of Department, superior officers and colleagues, disobedience and insubordination towards his Head of Department or other superior officers, and misconduct in the performance of his duties; full particulars were given to him in connection with the said complaints against him and he was requested to state not later than the 7th January, 1967, any grounds upon which he relied in order to exculpate himself.

He replied on the 13th January, 1967, in writing.

The hearing regarding the disciplinary charges which were eventually brought against him, took place before the respondent Commission on the 22nd February, 1967, the 23rd February, 1967, the 24th February, 1967, the 28th February, 1967, the 8th March, 1967, the 15th March, 1967, the 27th March, 1967 and the 28th March, 1967; the Commission reached its decision on the 5th May, 1967.

From the minutes relating to the decision of the Commission it appears that the applicant was found guilty unanimously but each member of the Commission stated his opinion regarding how to punish the applicant.

The following views were expressed :-

Mr. Y. Louca said that, having in mind the behaviour of the applicant all through the disciplinary hearing before the Commission and his non-repentance, he believed that it was impossible for the applicant to co-operate with his superior officers in future; for this reason he suggested exploring the possibility of posting the applicant to another Department; and, if this was not possible, that his services be terminated "with a right to pension".

Mr. D. Protestos stated that during the hearing before the Commission it had clearly appeared that there was great discord in the Department between the applicant and all his superior officers and that there was no hope of future co-operation between them. Mr. Protestos went on to say that the applicant was an efficient officer who could offer valuable service to the Republic; that his stay in his Department was difficult, if not impossible,

owing to the situation which had been created; that his posting to a comparable post in another Department, as for example the Audit Department, was not feasible; and so "for this reason" he suggested that the applicant be compulsorily pensioned off.

Mr. C. Lapas, having in mind that the applicant had already been sufficiently punished by the withholding of his salary increments, by having been interdicted for a long period and by having had to pay £1000 damages and costs (in District Court of Nicosia action 1418/66 to which reference will be made later on in this judgment), and believing that the applicant had been an honest officer, who rendered good service to the Government throughout his career, proposed either to withhold the salary increments of the applicant for such further period as was required to show real co-operation of the applicant with his Department, or to transfer the applicant to another Department and, in any case, to warn him that recurrence of similar behaviour would lead to his dismissal from the public service with loss of all his rights.

Mr. D. Theocharis, bearing in mind that the applicant had been under interdiction since the 19th September, 1966, and that in an action for libel—(action 1418/66)—which had been instituted against him by his Head of Department, on the basis of certain documents produced during the disciplinary hearing, the applicant had been adjudged to pay £1000 damages plus costs, felt that it was sufficient punishment to withhold two salary increments of the applicant, to severely reprimand him, and to order him to be in future devoted to his duty, disciplined and to comply with his superior officers' instructions.

The Chairman of the Commission, Mr. G. Theocharides, stated that from the evidence adduced and from the applicant's behaviour during the disciplinary hearing he had no doubt that the applicant could not stay in the service of Government "without serious detrimental effects on the whole Department".

The concluding part of the decision of the Commission is as follows :-

"The Commission considered very carefully the punishment which should be imposed on Mr. Kyprianou, having regard to the fact that as stated above the charges against

him have, on the whole, been proved. *Having regard to the opinion formed by each individual member as explained above*", the underlining has been done by me— "the Commission decided by a majority of 3 to 2 (Mr. Theocharis and Mr. Lapas dissenting) that Mr. Kyprianou be compulsorily retired from the service as from 1.6.67 with full pension rights for his service up to 31.5.67 inclusive".

Against the above decision the applicant filed this recourse; the proceedings before me followed a chequered course and they were prolonged considerably by a variety of happenings some of which are mentioned hereinafter :

First, the hearing was interrupted by interlocutory proceedings for the purpose of enabling counsel for the applicant to inspect a great number of documents which were in the possession of the respondent and had been produced at the disciplinary proceedings against the applicant.

Then, during the continuation of the hearing, it appeared that it had to be ascertained how it had happened that the applicant made, through counsel, on the 9th March, 1967, in submitting to judgment in action 1418/66 (see *exhibit* 12), a statement withdrawing unreservedly certain allegations which had been made by him against the Head of his Department, Mr. N. Ionides; as the said allegations were reiterated in the course of the address of counsel for the applicant, in the present proceedings before me, it appeared to be necessary to examine how and why the applicant had committed himself to the contrary in the said action 1418/66.

As was explained by counsel for the applicant his client acted in the above-described manner in action 1418/66 because he was advised by his then counsel that it would still be legally possible in future to take proceedings to set aside the judgment if there could be traced the material necessary to substantiate his said allegations, which, though true, could not be substantiated at the time of the hearing of the action, as the required material was not in applicant's possession.

It is to be noted that afterwards, on the 20th July, 1968, the applicant filed action 3104/68 in the District Court of Nicosia, by which he was seeking to set aside

the result of action 1418/66; action 3104/68 was eventually dismissed for want of prosecution (see *exhibit* 21).

Counsel who had appeared for the plaintiff, Mr. N. Ionides, in action 1418/66, and counsel who had appeared for the applicant as defendant in that action, gave evidence before me as regards how the proceedings therein were concluded on the 9th March, 1967. Having examined the situation on the basis of the totality of such evidence I decided to allow counsel for the applicant to continue arguing factual issues in relation to which he might perhaps have, in view of the applicant's conduct in action 1418/66, great difficulty in establishing his allegations; this course was adopted in order not to deprive the applicant of his right to be heard in full in support of his recourse.

Subsequently, the hearing was adjourned *sine die,* on the application of counsel for the applicant, as the applicant wished to complete investigations which he was carrying out in England in order to secure the evidence needed to prove his allegations; and, later on, an application was filed by counsel for the applicant seeking an order enabling the testimony of certain witnesses to be taken in England; eventually, however, this application was not dealt with, because it was agreed by counsel for the applicant that it should be shelved until renewed if necessary, and this was not done until the end of the hearing of this case.

I shall, next, deal with specific issues which were raised in the course of the protracted proceedings before me:

It has been argued by counsel for the applicant that the disciplinary process against his client did not take place *as a whole* before the Public Service Commission, within its relevant competence under Article 125 of the Constitution, but that part of such process took place in the Inland Revenue Department. In this respect counsel for the applicant has contended that there thus occurred a transfer of the disciplinary competence vested in the Commission and that such transfer contravened the relevant principles of administrative law.

It is correct that the competence vested in a particular organ cannot be transferred to another organ if there does not exist express legislative authorization for such a course (see, in this connection, Kyriakopoullos on Greek Administrative Law, 4th ed., vol. B, p. 28, and vol. C, p. 291, as well as the decisions of the Greek Council of State in cases 745/1932 and 367/1933). But, in my view, there has not taken place, as alleged, a transfer of the competence of the Commission. What has, in effect, happened is that there was carried out a preliminary investigation in the Department concerned by, or on the instructions, of the Head of such Department; and this investigation was not at all a matter within the competence of the Public Service Commission, under Article 125 of the Constitution, but a step preliminary to the exercise of such competence.

It is quite clear that there must be carried out an investigation by a Department in order to ascertain whether or not there exist sufficient reasons for an officer of the Department to be reported to the Public Service Commission in relation to the possibility that he may be guilty of disciplinary offences; and, indeed, it would be contrary to the interests of public officers in general if they were to be exposed to disciplinary proceedings without any preliminary investigation by their Departments into allegations made against them.

At the time when the conduct concerned of the applicant became the subject of a preliminary investigation by his Department there was not yet in force the Public Service Law, 1967 (Law 33/67); such Law came into effect later, on the 30th June, 1967, and by virtue of its provisions (see sections 80 - 82) a preliminary investigation is now a prerequisite of the institution of disciplinary proceedings; thus the Legislature confirmed what was already a practice adopted in the course of proper administration.

A number of other complaints of applicant's counsel, which appear to be related to each other, may be considered together: They are that the Head of the Inland Revenue Department, Mr. N. Ionides, who reported the applicant to the Commission, and who was a complainant regarding applicant's conduct directly affecting him,

appeared before the Commission during the disciplinary proceedings, not only as a witness, but, also, as a person who was putting questions to witnesses testifying before the Commission; and that the minutes of the first day of the proceedings show that counsel of the Republic, who appeared to present the case against the applicant, was appearing "for Mr. Ionides"; also, that the disciplinary trial of the applicant was an unfair proceeding because Mr. Ionides was present when witnesses, who were his subordinates in the Department, were giving evidence and, therefore, they could not feel entirely free to speak the whole truth and say things against Mr. Ionides.

Mr. Ionides reported the applicant to the Public Service Commission in his capacity as the Head of the Department concerned; and, as it is expressly stated in the minutes of the Commission, he was present during the disciplinary proceedings before the Commission in that capacity; so, the statement in the said minutes of the Commission that counsel of the Republic appeared "for Mr. Ionides" cannot, in the circumstances, be taken as indicating that counsel appeared "for Mr. Ionides" in his personal capacity, but it should be taken as indicating that counsel appeared "for Mr. Ionides" in his capacity as Head of the Department.

At no stage of the disciplinary proceedings was any objection raised by the applicant in connection with the presence of Mr. Ionides when officers subordinate to him were giving evidence; nor was any objection taken when Mr. Ionides was putting questions to witnesses. In the absence of any provision to the contrary and in view of the very complicated nature of the case (involving issues requiring specialized knowledge) it was not, in my opinion, wrong for the respondent Commission to allow Mr. Ionides to question witnesses; and, of course, he could not do so properly if he were to be prevented from being present during part of the proceedings, namely when subordinates of his were giving evidence. Nor can I, in any event, accept as correct, in the absence of cogent proof to that effect, that his presence intimidated any of his subordinates, so as to prevent them from telling the whole truth to the Commission; if such intimidation were to be presumed in every case in which a public officer

is giving evidence in the presence of a superior of his, who is in any way affected by such evidence, then absurd procedural results would be entailed, not only in respect of disciplinary proceedings but also in respect of proceedings of civil or criminal nature.

In the light of the foregoing I am of the view that no irregularity occurred because of anything done by Mr. Ionides in connection with the disciplinary process against the applicant; even if it were to be assumed that anything complained of in this respect by the applicant amounted to an irregularity, there is definitely no doubt in my mind that such irregularity was not of a material nature; and it has been accepted by case-law that there are irregularities which are of a substantial nature and affect the validity of the relevant administrative process and that there are also less serious, immaterial, irregularities which do not affect such validity (see, in this respect, Traité Pratique de la Fonction Publique by Plantey, 3rd ed., vol. A, p. 495, paragraph 1544, and Contentieux Administratif by Odent, 1970/71, vol. 5., p. 1446).

It has been, further, complained of by counsel for the applicant that none of the witnesses who were heard by the Commission, in the disciplinary proceedings, took an oath to tell the truth or any other kind of oath.

As pointed out in *Enotiadou* v. *The Republic* (1971) 3 C.L.R. 409, at pp. 414 - 415, disciplinary proceedings are not a trial by a Court but an inquiry by an administrative organ; as held in the *Enotiadou* case, in the absence of any express provision to that effect no oath need be administered to witnesses testifying in disciplinary proceedings.

In this respect counsel for the applicant referred to the case of *Perepolkin* v. *Superintendent of Child Welfare* [1957] 11 D.L.R. (2nd) 245; the full report is not available, but from the summary of this case in volume 28 (1959) of the English and Empire Digest, at p. 721, paragraph 1165, it appears that the tribunal concerned in that case should have heard witnesses on oath because of a provision to that effect in relevant legislation, namely the Children Act R.S.B.C. 1948 (section 8).

Another submission made on applicant's behalf has been that, as the applicant was away from his office due to having been interdicted since the 13th September, 1966, he was, as a result, prevented from having access to records which he needed for the preparation of his defence before the Commission.

There was not made any complaint to that effect by the applicant during the proceedings before the Commission; and it does not appear that any request of his for any records to be made available to him was ever refused. On the contrary, it appears from the minutes of the Commission that he was very well informed about the matters in issue and that a lot of records of the Inland Revenue Department were produced before the Commission as a result of points raised by the applicant.

From the totality of the material before me there is nothing to suggest that, in fact, the applicant did not have a full and fair hearing before the Commission or that any requirement of natural justice was contravened in the circumstances of this particular case.

As observed by Tucker, L.J. in *Russell* v. *Duke of Norfolk* [1949] 1 All E.R. 109, at p. 118, and adopted in *The Republic* v. *Georghiades* (1972) 3 C.L.R. 594, by Mr. Justice Hadjianastassiou and Mr. Justice A. Loizou (at p. 614 and pp. 660-661 respectively):

> "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."

The above dictum of Tucker L.J. was adopted, also, by Lord Morris in the recent case of *Furnell* v. *Whangarei High Schools Board* [1973] 1 All E.R. 400, at p. 412.

It has been contended by the applicant that the Commission's decision that the applicant was guilty of the disciplinary offences in respect of which he was punished was not warranted by the facts established during the hearing of the case before the Commission.

The salient facts of the case were very lucidly, indeed, stated in the opinion expressed by the Chairman of the Commission, Mr. G. Theocharides and they are as follows :-

The applicant, who had been in the Government service since the 1st January, 1950, became on the 1st August, 1964, a Principal Assessor in the Inland Revenue Department and was posted to Famagusta, in charge of the Famagusta and Larnaca Districts.

Before his said posting, the applicant, being an Assessor, was employed in the Investigations Section of the Department.

The work and conduct of the applicant—as described in Annual Confidential Reports before his promotion to Principal Assessor and his posting to Famagusta—were "very good" and it was stated that he was efficient and keen in detecting tax evaders.

When the applicant was employed in the Investigations Section, in Nicosia, he was dealing with the "Bohdjelians case". When he was posted to Famagusta he took with him the files of this case, with the approval of the Assistant Director of the Department.

Then, on the 6th November, 1964, the applicant was asked, by means of a letter of the Senior Investigations Officer, to send the said files to Nicosia. The applicant replied on the 12th November, 1964, stating that he did not accept intervention in his duties; he made various insinuations and accused, in particular, the Senior Investigations Officer that he failed to settle outstanding cases and that he had reverted to cases closed by the applicant in order to belittle the applicant's contribution to the work of the Department.

On the 16th January, 1965, Mr. Ionides, the Director of the Inland Revenue Department, wrote to the Minister of Finance in a manner implying that the re-opening by applicant of cases and his actions with reference to the Bohdjelians case and other connected cases involved reasons other than the collection of tax; they were aiming at satisfying his own personal motives. When he came to know of this letter the applicant addressed a letter to Mr. Ionides, on the 1st March, 1965, using improper lan-

guage and accusing him of always doing things hypocritically.

In correspondence that followed the applicant accused Mr. Ionides of having amended or forged a bank certificate relating to the Bohdjelians case; and, in a statement which he made before the Commission, the applicant went so far as to allege that even the Minister of Finance was involved in the amendment of the said bank certificate.

In dealing with the facts of the case the Chairman of the Commission observed that he had formed the view that the behaviour of the applicant was, to a great extent, due to his belief that the work in the Department was not carried out properly or satisfactorily; that the applicant in attempting to discuss a few cases, which he thought were dealt with improperly or inefficiently, had made, at the same time, insinuations concerning the character of certain officers; and that the applicant failed to substantiate any of his allegations or insinuations.

The Chairman concluded, on the basis of the evidence adduced during the case, that the charges preferred against the applicant—(which were alluded to earlier on in this judgment)—had, on the whole, been proved; but the Chairman added that, to a certain extent, the applicant had been unnecessarily provoked by statements made by Mr. Ionides, either written or oral.

In the Chairman's opinion, whatever were the applicant's reasons for acting as he did, his behaviour was not the proper one for a public officer; there were other ways and means for bringing any faults or irregularities to the notice of higher authorities, instead of resorting to accusations, insinuations, and utterly improper language and behaviour and, thus, disturbing the work of a very important Department.

As has been pointed out in the *Enotiadou* case, *supra*, it is well settled that an administrative Court in dealing with a recourse made against a disciplinary conviction cannot interfere with the subjective evaluation of the relevant facts made by the appropriate organ (and see,

also, the decisions of the Council of State in Greece—«Συμβούλιον τῆς Ἐπικρατείας»—in cases 2654/1965 and 1129/1966).

On the basis of the material before me I am quite satisfied that the verdict that the applicant was guilty as charged, which was reached unanimously by the members of the Commission, was reasonably open to it and cannot, and should not, be interfered with by this Court. The applicant was not found guilty because of his zeal, or because he believed—rightly or wrongly—that superior officers in his Department had not carried out their duties properly, but because he behaved in a manner, even when pursuing in good faith his aims, which was, as correctly found by the Commission, an improper one in the circumstances, with the result that there were committed by him the disciplinary offences with which he was charged; consequently, certain complaints of the applicant to the effect that some aspects of the case, which were allegedly relevant to the issue of whether or not the applicant was right as regards his contentions against his superiors, were not fully investigated by the Commission, are complaints which, even if they were to be found to be valid, cannot be treated as being of any material significance, inasmuch as he was found disciplinarily guilty of improper conduct, as a public officer, which could not be treated as being justifiable either by zeal or by good faith.

In relation, next, to the argument of counsel for the applicant to the effect that the applicant ought to have been heard, by the Commission, in mitigation, after he had been found guilty of the disciplinary charges and before any punishment was imposed on him, I am of the opinion that this is a valid argument, in the light especially of the fact that this was, indeed, a case in which the Commission met with quite some difficulty in dealing with the question of punishment. The failure to hear the applicant in mitigation deprived the Commission of an essential opportunity of knowing the attitude of the applicant after he had been informed that he had been found guilty of the disciplinary offences concerned; it is true that his attitude during the hearing before the Commission might have created the impression that it was no longer possible for him to behave in a co-operative

manner towards his superiors in the Department and, therefore, his services had to be terminated; but, on the other hand, it was reasonably possible that, once the applicant had come to know the outcome of the disciplinary proceedings (in which he was entitled to defend himself as strenuously as he thought fit to do), he would have made such a plea in mitigation which, coupled with the fact that some members of the Commission had found that he had misconducted himself due to excessive zeal, could have persuaded at least a majority of the members of the Commission—(two of the members of which were in any case against the termination of his services)—not to take such a drastic step as putting an end to his career in the public service.

Also, the need to allow a plea in mitigation before deciding about punishment for a disciplinary offence has been stressed in the case of *Fysentzides* v. *The Republic* (1971) 3 C.L.R. 80 (see, too, *Markoullides* and *The Republic*, 3 R.S.C.C. 30).

It follows, therefore, that the decision of the respondent has to be annulled to the extent to which it relates to the punishment imposed on the applicant, as being a decision reached by means of exercising in a defective manner the revelant discretionary powers.

A second reason for which I have formed the view that the part of the Commission's decision which relates to the punishment imposed on the applicant should be annulled is the fact that there does not appear to have existed *actually* a majority in favour of such punishment:

From the separate opinions of the members of the Commission, which have already been quoted in this judgment, it appears that at the meeting at which its *sub judice* decision was reached, on the 5th May, 1967, the Chairman and one member were in favour of the termination of the services of the applicant, two members were against such a course and proposed less severe punishment, and one member—Mr. Louca—was in favour of the termination of applicant's services *if* after exploring the possibility of posting him to another Department it was found that it was not possible to do so.

It is quite clear that the said possibility was not explored because the Commission's decision was reached at the end of that same meeting on the 5th May, 1967; nor is there anything in the minutes of such meeting to indicate that Mr. Louca altered his opinion, so as to make it a definite and unconditional vote in favour of the termination of the services of the applicant there and then, without prior exploration of the possibility of posting the applicant to another Department.

As a matter of fact the minutes of the Commission state that "having regard to the opinion formed by each individual member as explained above" the compulsory retirement of the applicant—as the termination of his services was treated—was decided "by a majority of 3 to 2"; it seems, therefore, that prematurely at that stage the opinion of Mr. Louca was counted as a vote in favour of the applicant's compulsory retirement; thus a material irregularity occurred, because a majority was assumed to exist for a final decision to be taken *at that time* in respect of the compulsory retirement of the applicant, when in fact no such majority existed yet; the proper course, in the circumstances, was to adjourn, in view of the absence of a majority either way, the final decision, in order to explore the possibility of transferring the applicant to another Department; and it might be usefully pointed out that the only other member of the Commission who sided with the Chairman in favour of the termination of the services of the applicant did so because he took it for granted that his posting to a comparable post in another Department was not feasible.

A further ground on which the part of the Commission's decision which refers to the punishment imposed on the applicant has to be annulled is that the Commission was not competent, at the time, to terminate the applicant's services with preservation of his pension rights, that is to retire him compulsorily from the service.

Since the *sub judice* decision of the Commission was reached on the 5th May, 1967—that is before the enactment on the 30th June, 1967, of the Public Service Law, 1967 (Law 33/67) which for the first time empowered, by section 79, the Commission to use "compulsory retirement" as a disciplinary punishment—it is clear that in the

present case the Commission could only terminate the services of the applicant and then recommend to the appropriate organ under the Pensions Law, Cap. 311, the grant to him of a pension; it could not exercise itself in this respect the relevant competence under Cap. 311 (see, *inter alia, Papaleontiou* v. *The Republic* (1967) 3 C.L.R. 624, and *Lyssiotou* v. *The Republic* (1968) 3 C.L.R. 173).

I think that it might usefully be observed that if the Commission knew that it could only terminate the services of the applicant and that it would be up to another organ to decide whether or not to grant him a pension it is quite probable that it might not have decided to terminate his services.

In the light of the foregoing this recourse succeeds only in so far as it concerns the disciplinary punishment imposed on the applicant, which is declared to be null and void and of no effect whatsoever, as being contrary to law and in excess or abuse of powers.

In view of all relevant considerations, and especially as the applicant has only been partly successful in this recourse, I have decided not to make any order as to the costs of these proceedings.

Recourse successful in part.
No order as to costs.