1979 February 10

[TRIANTAFYLLIDES, P.]

PLATON VASSILIOU AND ANOTHER,

*Applicants,*

*v.*

POLICE DISCIPLINARY COMMITTEES,

*Respondents.*

(*Civil Applications Nos.* 2/79, 3/79).

---

*Certiorari—Prohibition—Orders of—Article* 155.4 *of the Constitution—Powers to issue such orders extend only to such matters not already within the jurisdiction created by means of Article* 146.1 *of the Constitution—Disciplinary proceedings, against Police Officers, before Disciplinary Committees set up under the Police (Discipline) Regulations,* 1958 *to* 1977*—Amount to the exercise of executive or administrative authority in the sense of the said Article* 146.1*—Court not satisfied, even prima facie, that, on the basis of the material at present before it, it is vested with jurisdiction under Article* 155.4 *in relation to the said disciplinary proceedings.*

The applicants, who were Police Officers, sought leave to apply for orders of Certiorari and Prohibition, under Article 155.4 of the Constitution, in connection with proceedings instituted against them before Disciplinary Committees, which have been set up under the provisions of the Police (Discipline) Regulations, 1958 to 1977.

*Held,* that the powers to issue, *inter alia,* orders of Prohibition and Certiorari, which are set out in Article 155.4 of the Constitution, extend only to such matters which are not already within the jurisdiction created by means of Article 146.1 of the Constitution; that the relevant proceedings, which have been instituted against the applicants, are of a disciplinary nature and that proceedings of this nature amount to the exercise of execu-

tive or administrative authority in the sense of Article 146.1, even though, admittedly, the procedure to be followed in connection with such proceedings has some judicial characteristics; and that, accordingly, on the basis of the material at present before this Court, it is not satisfied, even prima facie, that it is vested with jurisdiction under Article 155.4 in relation to the disciplinary proceedings in question because such proceedings amount to an exercise of executive or administrative authority in the sense of Article 146.1 and their validity, in any respect, can only be challenged by means of the exclusive remedy provided by the said Article 146 (*Ramadan* v. *Republic,* 1 R.S.C.C. 49 and *Haros* v. *Republic,* 4 R.S.C.C. 39 followed; *Zenios and Another* v. *Disciplinary Board* (1978) 1 C.L.R. 382 distinguished).

*Applications dismissed.*

*Per curiam*: (1) The conclusion that the disciplinary proceedings concerned are matters coming within the ambit of Article 146.1 and, therefore, not within the ambit of Article 155.4 of the Constitution is based on the material at present before this Court; so, it should not, ex abundanti cautela, exclude the possibility that when the said proceedings are completed and therefore, more material in relation to their nature is available before the Court, it might be open to the applicants to put forward again the contention that their essential nature is such that they do not come within the ambit of Article 146.1, but within that of Article 155.4. It must be made quite clear, however, that this Court makes this observation without committing itself, in any way, in this respect.

(2) That though it is correct that in the exercise of its powers, under Article 155.4, this Court has to apply the relevant principles of English Law; and that, on the strength of such principles, whenever an organ is exercising legal authority in order to determine questions affecting the rights of a citizen and such organ has a duty to act judicially leave to apply for an order of certiorari should be granted, the said principles have, however, to be applied within the ambit of the relevant jurisdiction created by the Constitution by means of Article 155.4.

Cases referred to:

*Ex parte Papadopoullos* (1968) 1 C.L.R. 496 at p. 498;

*Athanassiou* v. *Attorney-General of the Republic* (1969) 1 C.L.R. 439 at p. 456;

*Republic* v. *District Judge at Morphou–Ex parte Theofanous and Others* (1969) 1 C.L.R. 607 at p. 612;

*Ex parte Maroulleti,* (1970) 1 C.L.R. 75 at p. 77;

*In Re Panaretou* (1972) 1 C.L.R. 165 at p. 167;

*Zenios and Another* v. *Disciplinary Board* (1978) 1 C.L.R. 382 at p. 387;

*Ramadan* v. *The Electricity Authority of Cyprus and Another,* 1 R.S.C.C. 49 at pp. 53–54;

*Kyriakides* v. *The Republic,* 1 R.S.C.C. 66 at p. 75;

*Haros* v. *The Republic,* 4 R.S.C.C. 39 at p. 43;

*Mustafa* v. *Neophitou and Others,* (1963) 2 C.L.R. 503 at pp. 508–509;

*Damianou* v. *The Republic* (1973) 3 C.L.R. 282 at p. 291;

*Republic* v. *Demetriades* (1977) 12 J.S.C. 2102 (to be reported in (1977) 3 C.L.R.);

*Papanicolaou (No. 1)* v. *The Republic* (1968) 3 C.L.R. 225 at p. 232;

*Gavriel* v. *The Republic* (1971) 3 C.L.R. 185 at pp. 202–203;

*Attorney-General of the Republic* v. *Christou,* 1962 C.L.R. 129;

*Hji Papayiannis* v. *The Registrar of Co-Operative Credit Societies of the Greek Communal Chamber* (1965) 1 C.L.R. 263;

*R.* v. *Manchester Legal Aid Committee Ex parte R.A. Brand & Co. Ltd.* [1952] 1 All E.R. 480;

*R.* v. *Criminal Injuries Compensation Board, Ex parte Lain* [1967] 2 All E.R. 770 at p. 778;

*R.* v. *Hull Prison Board of Visitors, Ex parte St. Germain and Others* [1978] 2 All E.R. 198 at p. 203.

**Applications.**

Applications for leave to apply for orders of Certiorari and Prohibition in connection with disciplinary proceedings before the Disciplinary Committees set up under the provisions of the Police (Discipline) Regulations, 1958 to 1977.

*L. N. Clerides,* for the applicants.

*A. Evangelou,* Counsel of the Republic, for the Disciplinary Committees.

*Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following decision. These two applications, by the respective applicants, for leave to apply for

orders of Certiorari and Prohibition, were dealt with simultaneously, in view of their close similarity, and, therefore, the present Decision is being given in relation to both of them.

The applicants seek leave to apply for the said orders in connection with proceedings instituted against them before Disciplinary Committees which, apparently, have been set up under the provisions of the Police (Discipline) Regulations, 1958 to 1977.

It is not in dispute that the said Committees were, in fact, set up under the said Regulations, but what is mainly disputed is whether they were validly so set up and whether they possess competence to deal with the disciplinary offences with which the applicants have been charged before them.

Before granting the leave applied for I have to be satisfied not only that the applicants have made out a prima facie case sufficient to justify the granting of such leave (see, *inter alia*, *Ex parte Papadopoullos*, (1968) 1 C.L.R. 496, 498, *Athanassiou* v. *Attorney-General of the Republic*, (1969) 1 C.L.R. 439, 456, *Republic* v. *District Judge at Morphou–Ex parte Theophanous and others*, (1969) 1 C.L.R. 607, 612, *Ex parte Maroulleti*, (1970) 1 C.L.R. 75, 77, *In Re Panaretou*, (1972) 1 C.L.R. 165, 167 and *Zenios and another* v. *Disciplinary Board*, (1978) 1 C.L.R. 382, 387), but, also, I must be satisfied, at least prima facie, that, under the circumstances, I possess jurisdiction under Article 155.4 of the Constitution to issue the orders of Certiorari and Prohibition which are applied for by the applicants.

I have heard, at length and in particular, counsel for the applicants in relation to the aspect of jurisdiction under Article 155.4, and I have, also, had the opportunity to hear counsel who appeared on behalf of the Disciplinary Committees concerned, after notice had been given to them of the present two applications.

Having considered all the arguments advanced in this connection, I find, on the basis of the material at present before me, not only that I am not satisfied, even prima facie, that I am vested with jurisdiction under the said Article 155.4, but, on the contrary, that it cannot be held that such jurisdiction exists. My reasons for reaching this conclusion are as follows:

It has been held in *Ramadan* v. *The Electricity Authority of Cyprus and another*, 1 R.S.C.C. 49, that the powers to issue, *inter alia*, orders of Prohibition and Certiorari, which are set out in Article 155.4, extend only to such matters which are not already within the jurisdiction created by means of Article 146.1 of the Constitution; the relevant passage of the judgment in that case reads as follows (at pp. 53–54):-

"Paragraph 1 of Article 146 of the Constitution reads as follows:-

'The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person'.

Paragraph 4 of Article 155 of the Constitution reads as follows:-

'The High Court shall have exclusive jurisdiction to issue orders in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari'.

It is clear from the use of the word 'exclusive' in both the above provisions that the jurisdictions in question cannot be concurrent in nature.

The Court is of the opinion that in order to arrive at the correct interpretation of these two provisions the Constitution must be read as a whole.

There can be no doubt that Article 146 is specifically intended to create a separate system of administrative justice which has been entrusted to this Court. This proposition has already been expounded in the ruling of this Court on the preliminary legal issues in Application No. 1/60.*

It is further equally clear that the object of paragraph

* *The Holy See of Kitium* v. *The Municipal Council of Limassol*, 1 R.S.C.C. at p. 21.

4 of Article 155 is to vest in the High Court the jurisdiction of the former Supreme Court of the Colony of Cyprus relating to the issue of prerogative orders, subject always, of course, to the rest of the Constitution.

In the opinion of this Court the powers of the High Court to issue the orders set out in paragraph 4 of Article 155 extend only to such matters which are within the jurisdiction of the High Court and which are not already within the jurisdiction of the Supreme Constitutional Court under paragraph 1 of Article 146.

The matter is really put beyond doubt by reference to paragraph 1 of Article 152 of the Constitution which reads as follows:-

> 'The judicial power, other than that exercised under Part IX by the Supreme Constitutional Court and under paragraph 2 of this Article by the courts provided by a communal law, shall be exercised by a High Court of Justice and such inferior courts as may, subject to the provisions of this Constitution, be provided by a law made thereunder.'

As Article 146 is in Part IX of the Constitution and as Article 155 is in Part X, the opening Article of which is Article 152, it follows that the judicial power exercised by the High Court and inferior courts under Part X of the Constitution cannot extend to any matter which is already within the jurisdiction of the Supreme Constitutional Court under paragraph 1 of Article 146.

On the other hand Article 136 of the Constitution, which precedes a series of Articles, including Article 146, and provides that this Court 'shall have exclusive jurisdiction to adjudicate finally on all matters as provided' in such Articles, is free of any corresponding limitation by way of reference to the jurisdiction of the High Court and inferior courts.

As the subject matter of this case is clearly within the administrative jurisdiction created by Article 146 it follows that this Court has exclusive jurisdiction in the matter."

In the above passage reference is made to the then, but not

at present, functioning Supreme Constitutional Court and High Court of Justice of the Republic; the jurisdiction and powers of both of them are now vested in, and exercised by, this Supreme Court of Cyprus under section 9(a) of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64).

Of course, the transfer, as above, of the said jurisdictions, including those under Articles 146.1 and 155.4 of the Constitution, does not entail the fusing into one of both such jurisdictions; so they still have to be exercised separately within their prescribed limits and in proper cases only.

The *Ramadan* case, *supra*, was referred to in the subsequent case of *Kyriakides* v. *The Republic*, 1 R.S.C.C. 66, where (at p. 75) the following are stated:–

> "In its Judgment in Application 1/61* this Court has defined the limits between its administrative jurisdiction created by paragraph 1 of Article 146 and the jurisdiction of the High Court and inferior courts. In accordance with that Judgment, in case of doubt on account of apparent or alleged conflict of jurisdictions, the decisive test is to look first at Article 146 in order to determine whether the particular matter is within the exclusive jurisdiction of this Court under such Article."

It cannot be really disputed that the relevant proceedings, which have been instituted against the two applicants, who are both police officers, are of a disciplinary nature; and it is, by now, well established that proceedings of this nature amount to the exercise of executive or administrative authority in the sense of Article 146.1, even though, admittedly, the procedure to be followed in connection with such proceedings has some judicial characteristics.

In *Haros* v. *The Republic*, 4 R.S.C.C. 39, the following were stated (at p. 43), in connection with the nature of disciplinary proceedings instituted against a policeman under the Police (Discipline) Regulations, 1958:–

"The Court is of the opinion that the proceedings under

* *Hussein Ramadan* v. *The Electricity Authority of Cyprus etc.*, 1 R.S.C.C., at p. 54.

the aforesaid Regulations whether in the first instance, on review or on appeal, amount to the exercise of executive or administrative authority, in the sense of Article 146, and that, therefore, this Court has competence in the matter. The Court has reached this conclusion because, *inter alia*, under the order of things established by our Constitution disciplinary control in the public law domain is treated as an executive matter and not as judicial matter, as is clearly shown by the closely analogous case of disciplinary control over public officers which, by operation of Article 125, is entrusted to the Public Service Commission, an executive organ.

Disciplinary control, as provided for under the relevant Regulations, is a manifestation of the exercise of executive power, though admittedly the procedure to be followed has some judicial characteristics, and it is not an instance of the exercise of judicial power, which is the adjudication between parties to a dispute by an independent Court."

The above view was adopted, also, in *Mustafa* v. *Neophitou and others*, (1963) 2 C.L.R. 503, where (at pp. 508-509) the following are stated, after the *Haros* case, *supra*, has been referred to:-

"It was decided in that case that disciplinary control, as provided under the relevant Police Regulations, is a manifestation of the exercise of executive power and though the procedure to be followed has some judicial characteristics, it is not an instance of the exercise of judicial power and therefore a recourse under Article 146 against such a decision, lay."

Also, in *Damianou* v. *The Republic*, (1973) 3 C.L.R. 282, Hadjianastassiou J. adopted (at p. 291) the aforequoted passage from the judgment in the *Haros* case.

I regard the leading cases of *Ramadan* and *Haros*, *supra*, as having been correctly decided in so far, in any event, as they relate to the matters under consideration in this Decision, and, moreover, I regard them as binding on me when sitting alone as a Member of the Supreme Court, in view of the doctrine of judicial precedent as it has been expounded by the Court in *The Republic* v. *Demetriades* (1977)* 12 J.S.C. 2102.

* To be reported in (1977) 3 C.L.R.

In the light of the foregoing exposition of the law I have formed my already stated view that I do not possess any jurisdiction under Article 155.4 in relation to the disciplinary proceedings in question, which have been instituted against the applicants, because such proceedings amount to an exercise of executive or administrative authority in the sense of Article 146.1 of the Constitution and their validity, in any respect, can only be challenged by means of the exclusive remedy provided by the said Article 146; and, on this point, I do not agree with counsel for the applicants that this remedy is, necessarily, only available at the conclusion of the said disciplinary proceedings, because it might possibly be found—though at this stage I leave this issue entirely open—that they form a composite administrative action, some intermediate stages of which could be challenged by recourse under Article 146 in case it was held that they amount to executory acts or decisions on their own (see, in this respect, *Papanicolaou (No. 1)* v. *The Republic*, (1968) 3 C.L.R. 225, 232, and *Gavriel* v. *The Republic*, (1971) 3 C.L.R. 185, 202–203).

Also, I would like to point out that my conclusion that the disciplinary proceedings concerned are matters coming within the ambit of Article 146.1 and, therefore, not within the ambit of Article 155.4 of the Constitution, is based on the material at present before me; so, I should not, ex abundanti cautela, exclude the possibility that when the said proceedings are completed and, therefore, more material in relation to their nature is available before the Court, it might be open to the applicants to put forward again the contention that their essential nature is such that they do not come within the ambit of Article 146.1, but within that of Article 155.4: I must make it clear, however, that I make this observation without committing myself, in any way, in this respect.

Counsel for the applicants has submitted that in the exercise of its powers under Article 155.4, this Court has to apply the relevant principles of English Law; and this is, in my view, a correct proposition (see, for example, *The Attorney-General of the Republic* v. *Christou*, 1962 C.L.R. 129, and *Hji Papayiannis* v. *The Registrar of Co-Operative Credit Societies of the Greek Communal Chamber*, (1965) 1 C.L.R. 263). Also, counsel for the applicants went on to submit further that, on the strength of the said principles, whenever an organ is exer-

cising legal authority in order to determine questions affecting the rights of a citizen and such organ has a duty to act judicially leave to apply for an order of Certiorari should be granted; that is, again, in my opinion, a correct proposition (see, *inter alia*, *R.* v. *Manchester Legal Aid Committee Ex parte R.A. Brand & Co., Ltd.*, [1952] 1 All E.R. 480, *R.* v. *Criminal Injuries Compensation Board, Ex Parte Lain*, [1967] 2 All E.R. 770, 778, *R.* v. *Hull Prison Board of Visitors, ex parte St. Germain and others*, [1978] 2 All E.R. 198, 203, as well as the *Hji Papayiannis* case, *supra*).

The said principles of English law have, however, to be applied within the ambit of the relevant jurisdiction created by our Constitution by means of Article 155.4, and cannot, consequently, be applied, in view of the *Ramadan* and *Kyriakides* cases, *supra*, in relation to matters which are within the ambit of Article 146.1 of the Constitution, as the disciplinary proceedings against the present applicants appear to be.

In the light of all the reasons that I have given in this Decision I have, therefore, reached, as already indicated, the conclusion that it is not possible for me to assume or exercise jurisdiction in the present cases under Article 155.4 so as to grant to the applicants the leave applied for by them.

Before concluding, I should observe that counsel for the applicants has invited me to follow the course adopted by the majority of the Full Bench of this Court in the *Zenios* case, *supra*, where leave was granted to apply for orders of Certiorari and Prohibition and the question of the jurisdiction of the Court was left to be decided together with all other relevant issues related to the merits of the applications. I am of the opinion that the *Zenios* case is clearly distinguishable, because there, as it emerges from the judgment of the majority of the Court, which was delivered by L. Loizou J., in order to decide the issue of the jurisdiction of the Court there had to be decided other issues going to the merits of the applications, such as the status of the organ concerned, which was a matter interwoven with the question of the jurisdiction of the Court. This is not so in the present cases, where, in my opinion, on the basis of the material at present before me, there can be no doubt that the organs concerned are organs of a disciplinary nature, exercising executive or administrative authority, in the sense of Article

146.1 of the Constitution; and matters such as whether such organs have been validly set up or lawfully entrusted with the task of dealing with the disciplinary charges against the applicants are matters which can be considered when examining, if necessary, the decisions of such organs in recourses instituted under Article 146.1, above; and, of course, for the time being, I leave all these issues entirely open.

In the result these applications cannot be granted and are dismissed accordingly.

*Applications dismissed.*