1980 April 10

[MALACHTOS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EVANGELOS PETROU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Case No.* 272/78).

Police officers—Disciplinary offences—Disciplinary Committee set up under regulation 32 *of the Police (Discipline) Regulations* 1958 *to* 1976—*May be composed either of Public Servants or Police Officers or both—Definition of "Public Service" in section* 2 *of the Public Service Law,* 1967 (*Law* 33/67).

Administrative Law—Disciplinary punishment—An administrative Court has no jurisdiction to decide whether it is excessive or not—Article 146.4 *of the Constitution.*

Constitutional Law—Recourse under Article 146.1 *of the Constitution concerning disciplinary punishment—Administrative Court has no jurisdiction to decide whether it is excessive or not—Article* 146.4 *of the Constitution.*

Natural Justice—Rules of—Right to be heard—Rules of natural justice applicable to offences in general—Article 12 *of the Constitution—Police officer—Disciplinary punishment—Review and confirmation by Minister—Appeal to the Council of Ministers under regulation* 38 *of the Police (Discipline) Regulations,* 1958 *to* 1977—*Police officer had the right to be heard or to submit his views in writing*—Sub judice *dismissal of his appeal annulled as amounting to a violation of the above rule of natural justice.*

The applicant, an Inspector of Police, was charged under the Police (Discipline) Regulations 1958 to 1977 for disobedience

to Orders contrary to regulation 7, paragraph 3, of the First Schedule of the Discipline Code, that on the 4th and 5th August, 1977, being a member of the Police Force of the rank of Inspector and while on duty disobeyed the Order of the Chief of Police dated 3rd August, 1977, by which he was bound to wear black arm band due to the death of Archbishop Makarios, the late President of the Republic of Cyprus. The case was referred to the Minister of the Interior and Defence under regulation 10(A)* of the above Regulations, who appointed by virtue of regulation 32 a Disciplinary Committee consisting of three members of the Force in order to try the case against the applicant. This Disciplinary Committee tried the case and under regulation 35 imposed on 1st December, 1977, on the applicant the disciplinary sentence of dismissal from the ranks of the Force.

The case was then reviewed by virtue of regulation 36 by the Minister who, on the 7th March, 1978, confirmed the decision of the Committee.

The applicant appealed against the decision of the Minister to the Council of Ministers in accordance with regulation 38** and the Council of Ministers by its decision dated 17th May, 1978, dismissed the appeal; and hence this recourse.

In issuing the decision complained of the respondent Council of Ministers did not hear the applicant or his advocate, but it had before it only the record of proceedings before the Disciplinary Committee and the Minister as well as the grounds*** on which the appeal against the decision of the Minister was based. These grounds were submitted in response to a letter dated 4th April, 1978, addressed by the Director-General of the Ministry of Interior to Counsel for applicant informing him that he had to state the grounds on which the appeal was based.

Counsel for the applicant contended:

(a) That the Disciplinary Committee, which was appointed by the Minister was wrongly constituted as it was entirely composed of Members of the Police Force and did not contain any Member of the Public Service;

* Quoted at pp. 211–12 *post*.

** Quoted at p. 215 *post*.

*** These grounds are quoted at pp. 217–18 *post*.

whereas under regulation 32*, this Committee should be a mixed committee of Public Servants and Members of the Police Force.

(b) That the Minister in reviewing the case under regulation 36 took into account a disciplinary offence for which the applicant was charged but was not convicted, as proceedings against him were suspended due to the coup d'etat and the Turkish Invasion that followed.

(c) That the principles of natural justice in the proceedings before the Council of Ministers have been violated as the applicant was not invited to express his views and so he was deprived of the right to be heard.

Held, (1) that the purpose of insertion of the words "including the force" in regulation 32 was to cover Police Officers who otherwise would be excluded, as Members of the Police Force are not considered as Public Servants (see the definition of "Public Service" appearing in section 2 of the Public Service Law, 1967 (Law 33/67)); that, thus, the Disciplinary Committee may be composed either of Public Servants or Police Officers, or both; and that, therefore, the Disciplinary Committee in the present case, which was composed solely of Police Officers, was not wrongly constituted.

(2) That though the Minister in examining as to whether the sentence imposed by the Disciplinary Committee on the applicant was excessive, did not only make reference to his previous convictions but also referred to the fact that on the 29th day of August, 1973, the applicant was interdicted for a serious offence, i.e. for insulting the then President of the Republic; that although, as it appears from the decision of the Minister this fact might have had some bearing on the matter, yet, this Court will not pronounce on it since as an administrative Court, it has no jurisdiction to decide on the question of sentence as to whether it is excessive or not (see Article 146.4 of the Constitution).

(3) That there is no doubt that where we are concerned with disciplinary proceedings before the Council of Ministers as a

* Regulation 32 provides as follows:

"The Minister appoints a Committee consisting of three members of the Public Service, including the Force .....".

hierarchically superior organ, as in the present case, the rules of natural justice, which under Article 12 of the Constitution are applicable to offences in general, should be followed; that, consequently, the applicant had a right to be heard (see *Haros* v. *The Republic*, 4 R.S.C.C. 39); that, however, it is not necessary for an applicant to be heard before the Council of Ministers viva voce, as in open Court, but this right should be considered as fully satisfied if he were invited to submit his views in writing (see The Right of Defence Before the Administrative Authorities by Stasinopoulos, 1974 edition, pages 173 to 175); that it cannot be said that by the letter of the 4th April, 1978, addressed by the Director-General of the Ministry of Interior and Defence to counsel for applicant to the effect that he had to state the grounds on which his appeal was based, the right to be heard was satisfied; that applicant had, also, to be asked to express his views and give reasons in support of the said grounds; that, therefore, there has been a violation of the rules of natural justice; and that, accordingly, the decision of the Council of Ministers complained of should be, and it is hereby declared null and void.

Sub judice decision annulled.

Cases referred to:

Haros v. *The Republic*, 4 R.S.C.C. 39.

Recourse.

Recourse against the decision of the respondent Council of Ministers to confirm the sentence of applicant's dismissal from the ranks of the Police Force.

L. N. Clerides, for the applicant.

N. Charalambous, Counsel of the Republic, for the respondent.

Cur. adv. vult.

MALACHTOS, J.: The applicant in this recourse, which is made under Article 146 of the Constitution, claims a declaration of the Court that the decision of the Council of Ministers, which was taken on 17th May, 1978, and communicated to him by letter dated 26th May, 1978, by virtue of which the respondents confirmed the sentence of dismissal from the ranks of the Police Force imposed on the applicant, is null and void and of no legal effect.

The following are the relevant facts of the case.

The applicant, an Inspector of Police, was charged under the Police (Discipline) Regulations 1958 to 1977 for disobedience to Orders contrary to regulation 7, paragraph 3, of the First Schedule of the Discipline Code, that on the 4th and 5th August 1977, being a member of the Police Force of the rank of Inspector and while on duty disobeyed the Order of the Chief of Police under No. Limassol/56/6 dated 3rd August, 1977, by which he was bound to wear black arm band due to the death of Archbishop Makarios, the late President of the Republic of Cyprus. The case was referred to the Minister of the Interior and Defence under regulation 10(A) of the above Regulations, who appointed by virtue of regulation 32 a Disciplinary Committee consisting of three members of the Force in order to try the case against the applicant. This Disciplinary Committee tried the case and under regulation 35 imposed on 1st December, 1977, on the applicant the disciplinary sentence of dismissal from the ranks of the Force.

The case was then reviewed by virtue of regulation 36 by the Minister who, on the 7th March, 1978, confirmed the decision of the Committee.

The applicant appealed against the decision of the Minister to the Council of Ministers in accordance with regulation 38 and the Council of Ministers by its decision under No. 16881 dated 17th May, 1978, dismissed the appeal.

The said decision reads as follows:

"Appeal of Inspector Evangelos Petrou, who was convicted by the Disciplinary Committee to the Punishment of *Dismissal*

(Submission under No. 396/78)

The Council considered the appeal attached to the submission of Appendix B, on the part of Inspector Evangelos Petrou, as well as all the elements of his case, who was convicted to the punishment of dismissal by virtue of Regulation 36 of the Police (Discipline) (Amendment) Regulations of 1976 and decided, by virtue of Regulation 38 of the said Regulations, to confirm it.

The Minister of Interior did not take part in the above decision."

As against this decision the applicant filed the present recourse.

The relevant Regulations in the present case are regulations 10A and 32 to 38, both inclusive, and read as follows:

"10Α. Μελέτη Πορίσματος ὑπὸ ὑπουργοῦ.

(1) Ἀνεξαρτήτως τῶν διατάξεων τῶν Κανονισμῶν 10 ἕως 22, ἀμφοτέρων συμπεριλαμβανομένων, ὁ Ὑπουργὸς δύναται, καθ' οἱονδήποτε χρόνον καὶ προτοῦ ὁ Ἀστυνομικὸς Διευθυντὴς ἢ ὁ Βοηθὸς Ἀρχηγὸς (Διοικήσεως), ἐνεργήσῃ ὡς προνοεῖται ὑπὸ τοῦ Κανονισμοῦ 10, νὰ ἀξιώσῃ παρὰ τοῦ Ἀρχηγοῦ ὅπως τὸ πόρισμα ἐρεύνης ὁμοῦ μεθ' ἁπάντων τῶν σχετικῶν ἐγγράφων διὰ πειθαρχικὴν δίωξιν οἱουδήποτε μέλους ὑποβληθῇ πρὸς αὐτὸν πρὸς μελέτην.

(2) Ὁ Ὑπουργὸς ἀφοῦ μελετήσῃ τὸ πόρισμα καὶ τὰ ἔγγραφα ἐὰν εἶναι τῆς γνώμης ὅτι—

(α) δὲν διεπράχθη οἱονδήποτε πειθαρχικὸν ἀδίκημα, ἐντέλλεται ὅπως οὐδεμία πειθαρχικὴ δίωξις ἀσκηθῇ κατὰ τοῦ καθ' οὗ ἡ καταγγελία.

(β) διεπράχθη μὲν ἀδίκημα ἀλλὰ τοῦτο δύναται νὰ ἐκδικασθῇ ἐπαρκῶς ὡς προνοεῖται ὑπὸ τῶν Κανονισμῶν 12 ἕως 18, ἀμφοτέρων συμπεριλαμβανομένων, ἐντέλλεται ὅπως ἡ ὑπόθεσις ἐπιστραφῇ εἰς τὸν Ἀστυνομικὸν Διευθυντὴν ἢ τὸν Βοηθὸν Ἀρχηγὸν (Διοικήσεως) ἀναλόγως τῆς περιπτώσεως, πρὸς κατηγορίαν τοῦ καθ' οὗ ἡ καταγγελία συμφώνως πρὸς τὸν Κανονισμὸν 10 καὶ τὴν μετὰ ταῦτα ἐκδίκασιν τῆς ὑποθέσεως δυνάμει τῶν ρηθέντων Κανονισμῶν 12 ἕως 18,

(γ) διεπράχθη ἀδίκημα, ὅπερ, λόγῳ τῆς σοβαρότητος αὐτοῦ ἢ τῶν περιστάσεων ὑπὸ τὰς ὁποίας διεπράχθη, θὰ ἔπρεπε, κατὰ τὴν κρίσιν του, νὰ ἐκδικασθῇ ὑπὸ Ἐπιτροπῆς ὡς προνοεῖται εἰς τὸν Κανονισμὸν 32, κατόπιν διατυπώσεως τῆς σχετικῆς κατηγορίας, διορίζει τοιαύτην Ἐπιτροπὴν καὶ παραπέμπει τὴν ὑπόθεσιν εἰς αὐτὴν πρὸς ἐκδίκασιν, ὁπότε οἱ Κανονισμοὶ 33, 34, 35, 36, 37 καὶ 38, τηρουμένων τῶν ἀναλογιῶν, θὰ ἐφαρμόζωνται

εἰς αὐτήν. Εἰς τοιαύτην περίπτωσιν ὁ Ὑπουργὸς παρέχει ἢ μεριμνᾶ ἵνα παρασχεθῶσι πρὸς τὸν καθ' οὗ ἡ καταγγελία ἀντίγραφον τοῦ πορίσματος, τῶν σχετικῶν ἐγγράφων καὶ τῆς κατ' αὐτοῦ κατηγορίας.

32. Διορισμὸς ἐπιτροπῆς.

(1) Ὁ Ὑπουργὸς διορίζει Ἐπιτροπὴν ἀποτελουμένην ἐκ τριῶν μελῶν προερχομένων ἐκ τῆς Κυβερνητικῆς Ὑπηρεσίας συμπεριλαμβανομένης καὶ τῆς Δυνάμεως, καθορίζει δὲ ταυτοχρόνως τὸν Πρόεδρον τῆς Ἐπιτροπῆς τοῦ ὁποίου ἀπαραιτήτως ἡ ἱεραρχικὴ τάξις ἢ ἡ ὀργανικὴ θέσις δέον νὰ εἶναι ὑψηλοτέρα ἐκείνης τοῦ καθ' οὗ ἡ κατηγορία.

(2) Ἡ Ἐπιτροπὴ κέκτηται ἐξουσίαν ὅπως ἐκδικάσῃ τὴν ὑπόθεσιν κατὰ τοῦ Ἀνωτέρου Ἀξιωματικοῦ, ἡ δὲ ἀκρόασις τῆς ὑποθέσεως διεξάγεται, κατὰ τὸ δυνατόν, διὰ τοῦ αὐτοῦ τρόπου ὡς ἡ ἀκρόασις ποινικῆς ὑποθέσεως ἐκδικαζομένης συνοπτικῶς:

Νοεῖται ὅτι ὁ Ἀνώτερος Ἀξιωματικὸς ἔχει τὸ δικαίωμα νὰ ὑπερασπισθῇ μετὰ ἢ ἄνευ συνηγόρου.

33. Ἐξουσίαι Ἀρχηγοῦ/Ἐπιτροπῆς.

(1) Ὁ Ἀρχηγὸς ἢ ἡ Ἐπιτροπὴ κέκτηται ἐξουσίαν ὅπως—

(α) καλέσῃ μάρτυρας καὶ ἀπαιτήσῃ τὴν προσέλευσιν αὐτῶν ὡς καὶ τὴν προσέλευσιν τοῦ Ἀνωτέρου Ἀξιωματικοῦ ἐναντίον τοῦ ὁποίου γίνεται ἡ ἀκρόασις ὡς εἰς συνοπτικὴν ποινικὴν δίκην.

(β) ἀπαιτήσῃ προσαγωγὴν παντὸς ἐγγράφου σχετιζομένου πρὸς τὴν κατηγορίαν, συμπεριλαμβανομένου καὶ τοῦ Προσωπικοῦ Φακέλλου τοῦ Ἀνωτέρου Ἀξιωματικοῦ,

(γ) ἀναβάλλῃ τὴν ἀκρόασιν ἀπὸ καιροῦ εἰς καιρὸν νοουμένου ὅτι ἡ ὑπόθεσις προχωρεῖ τὸ ταχύτερον δυνατόν,

(δ) χορηγῇ εἰς πᾶν πρόσωπον, μὴ μέλος τῆς Δυνάμεως, τὸ ὁποῖον ἐκλήθη ὡς μάρτυς εἰς τὴν ἀκροαματικὴν διαδικασίαν, οἱονδήποτε ποσὸν (καταβαλλόμενον ἐκ τοῦ Προϋπολογισμοῦ τῆς Δυνάμεως) τὸ ὁποῖον κατὰ τὴν κρίσιν τοῦ Ἀρχηγοῦ ἢ τῆς Ἐπιτροπῆς θὰ ἠδύνατο εὐλόγως νὰ ἀντιπροσωπεύσῃ τὰ ἔξοδα εἰς τὰ ὁποῖα τὸ ἐν λόγῳ πρόσωπον ὑπεβλήθη ἐν σχέσει πρὸς τὴν κλῆσιν του ὡς μάρτυρας,

(ε) διατάξη τὴν καταβολὴν ἀποζημιώσεων πρὸς οἱονδήποτε παραπονούμενον εἴτε ὑπὸ τοῦ καθ' οὗ ἡ δίωξις εἴτε ἐκ τοῦ σχετικοῦ κονδυλίου τοῦ Προϋπολογισμοῦ τῆς Δυνάμεως:

Νοεῖται ὅτι αἱ τοιαῦται ἀποζημιώσεις δὲν θὰ ὑπερβαίνουν τὰς 50 λίρας.

(2) Πᾶν πρόσωπον τὸ ὁποῖον ἀρνεῖται νὰ συμμορφωθῇ πρὸς τὰς ἐντολὰς τοῦ 'Αρχηγοῦ ἢ τῆς 'Επιτροπῆς ὡς ἐν ταῖς ὑποπαραγράφοις (α) καὶ (β) τῆς παραγράφου (1) τοῦ παρόντος Κανονισμοῦ προνοεῖται ἢ ἀρνεῖται εἰς οἱανδήποτε διαδικασίαν ἐνώπιον τοῦ 'Αρχηγοῦ ἢ τῆς 'Επιτροπῆς νὰ ἀπαντήσῃ εἰς οἱανδήποτε ἐρώτησιν νομίμως τεθεῖσαν εἰς αὐτὸ, διαπράττει ποινικὸν ἀδίκημα τιμωρούμενον διὰ χρηματικῆς ποινῆς μὴ ὑπερβαινούσης τὰς 200 λίρας:

Νοεῖται ὅτι οὐδεὶς μάρτυρας ὑποχρεοῦται νὰ ἀπαντήσῃ εἰς ἐρωτήσεις τεινούσας νὰ ἐνοχοποιήσουν τοῦτον ἢ νὰ τὸν καταστήσουν ὑπόλογον εἰς πληρωμὴν προστίμου ἢ κατάσχεσιν τῆς περιουσίας του.

34. 'Απόφασις 'Επιτροπῆς

'Η 'Επιτροπὴ δι' ἀποφάσεως αὐτῆς δύναται νὰ εὕρῃ τὸν 'Ανώτερον 'Αξιωματικὸν ἔνοχον οἱουδήποτε ἀδικήματος διὰ τὸ ὁποῖον κατηγορεῖται καὶ νὰ ἐπιβάλῃ εἰς αὐτὸν οἱανδήποτε τῶν πειθαρχικῶν ποινῶν τὴν ὁποίαν αἱ περιστάσεις τῆς ὑποθέσεως θὰ ἐδικαιολόγουν, ἢ νὰ ἀπαλλάξῃ τοῦτον τῆς κατηγορίας. Πᾶσα ἀπόφασις τῆς 'Επιτροπῆς λαμβάνεται κατὰ πλειοψηφίαν καὶ ὑπογράφεται ὑπὸ τοῦ Προέδρου τῆς 'Επιτροπῆς.

35. Ποιναί.

Αἱ ἀκόλουθοι πειθαρχικαὶ ποιναὶ δύνανται νὰ ἐπιβληθῶσιν ὑπὸ τῆς 'Επιτροπῆς:

(α) 'Επίπληξις,

(β) αὐστηρὰ ἐπίπληξις,

(γ) πρόστιμον μὴ ὑπερβαῖνον τὰς 100 λίρας,

(δ) κατακράτησις, διακοπὴ ἢ ἀναβολὴ προσαυξήσεως,

(ε) ὑποβιβασμὸς εἰς κατώτερον βαθμὸν ἢ κατωτέραν θέσιν,

(στ) ἀπαίτησις πρὸς παραίτησιν,

(ζ) ἀπόλυσις.

36. 'Αναθεώρησις ποινῆς ὑπὸ 'Υπουργοῦ.

(1) Εἰς πᾶσαν περίπτωσιν καθ' ἣν 'Ανώτερος 'Αξιωματικὸς ἠθελεν εὑρεθῆ ἔνοχος διὰ πειθαρχικὸν ἀδίκημα, ἡ καταδίκη αὐτοῦ καὶ ἡ εἰς αὐτὸν ἐπιβληθεῖσα ποινὴ ἀναθεωροῦνται ὑπὸ τοῦ 'Υπουργοῦ. Κατὰ τὴν ἀναθεώρησιν ὁ 'Υπουργὸς δύναται—

(α) νὰ ἀπαλλάξη τὸν 'Ανώτερον 'Αξιωματικὸν τῆς καταδίκης ἢ καὶ τῆς ποινῆς,

(β) νὰ μετατρέψη τὴν ἀπόφασιν ἢ ποινήν,

(γ) νὰ μειώση ἢ αὐξήση τὴν ποινήν,

(δ) νὰ ἐπικυρώση τὴν ἀπόφασιν ἢ ποινήν:

Νοεῖται ὅτι ὁ 'Υπουργὸς κατὰ τὴν ἀναθεώρησιν ποινῆς ἐπιβληθείσης ὑπὸ τοῦ 'Αρχηγοῦ δύναται νὰ ἐπιβάλη μόνον ποινὴν προνοουμένην ὑπὸ τοῦ Κανονισμοῦ 30.

(2) Οἱαδήποτε ποινὴ ἐπιβληθεῖσα ὑπὸ τοῦ 'Αρχηγοῦ ἢ τῆς 'Επιτροπῆς δὲν θὰ εἶναι ἐκτελεστὴ εἰμὴ κατόπιν ἀναθεωρήσεως καὶ ἐπικυρώσεως ταύτης ὑπὸ τοῦ 'Υπουργοῦ.

37. Πρακτικὰ διαδικασίας

Κατὰ τὴν ἀκρόασιν ὑποθέσεως ὑπὸ τοῦ 'Αρχηγοῦ ἢ τῆς 'Επιτροπῆς, καὶ κατὰ τὴν ἀναθεώρησιν ὑπὸ τοῦ 'Υπουργοῦ, τηροῦνται πρακτικὰ διαδικασίας.

38. 'Εφέσεις

'Ανώτερος 'Αξιωματικὸς ἐναντίον τοῦ ὁποίου ἐξεδόθη ἀναθεωρητικὴ ἀπόφασις δυνάμει τοῦ Κανονισμοῦ 36 δύναται, ἐντὸς ἑπτὰ ἡμερῶν ἀπὸ τῆς ἡμερομηνίας τῆς τοιαύτης ἀποφάσεως, νὰ ἐκκαλέση ταύτην ἐνώπιον τοῦ 'Υπουργικοῦ Συμβουλίου τοῦ ὁποίου ἡ ἀπόφασις θὰ εἶναι τελεσίδικος."

("10*A*. *Consideration of report by Minister.*

(1) Notwithstanding the provisions of regulations 10–22, both inclusive, the Minister may, at any time and before the Divisional Commander or the Assistant Chief of Police (Administration) takes action in accordance with regulation 10, request from the Chief of Police that the report of investigation together with all relevant

documents for disciplinary proceedings against any member be submitted to him for consideration.

(2) The Minister, after considering the report and the documents if of opinion that—

(a) no disciplinary offence has been committed, directs that no disciplinary charge be preferred against the member of the Force in respect of whom the accusation has been made;

(b an offence has been committed but it can be tried adequately in accordance with the provisions of regulations 12–18, both inclusive, directs that the case be sent back to the Divisional Commander or the Assistant Chief of Police (Administration) as the case may be, for preferring a charge against the member in respect of whom the accusation was made in accordance with regulation 10 and the subsequent trial of the case under the said regulations 12–18;

(c) an offence has been committed which due to its gravity or the circumstances under which it was committed, should, in his opinion, be tried by a committee as provided for under regulation 32, after preferring the relevant charge, appoints such a committee and refers the case to it for trial, in which case regulations 33, 34, 35, 36, 37 and 38 will be applicable, mutatis mutandis. In such a case the Minister provides or sees that the member against whom the accusation is made is provided with a copy of the report, the relevant documents and the charge preferred against him.

32. *Appointment of a Committee.*

(1) The Minister appoints a Committee consisting of three members of the Public Service including the Force, and at the same time he determines who shall be the Presiding Officer, whose hierarchical order or organic post should indespensably be higher than that of the accused.

(2) The Committee has power to try the case against a Senior Officer and the hearing of the case is carried out, as far as

possible, in the same way as the trial of a criminal case tried summarily:

Provided that a Senior Officer has the right to defend himself with or without an advocate.

33. *Powers of Chief of Police/Committee.*

(1) The Chief of the Police or the Committee have power to—

(a) call witnesses and demand their attendance and the attendance of the Senior Officer against whom the hearing takes place as in a summary criminal trial;

(b) demand the production of every document relative to the charge, including the Personal File of the Senior Officer;

(c) adjourn the hearing from time to time provided the case proceeds the soonest possible;

(d) grant to every person, who is not a member of the Force, who had been called as witness at the hearing, any sum (paid from the Budget of the Force) which in the judgment of the Chief of Police or the Committee would reasonably represent the costs which the said person has incurred in connection with his being called as a witness;

(e) order the payment of compensation to any complainant either by the officer under charge or from the relevant vote of the Budget of the Force:

Provided that such compensation will not exceed £50.—.

(2) Every person who refuses to comply with the directions of the Chief of Police or the Committee as provided for in sub-paras. (a) and (b) of para. 1. of this regulation or refuses in any proceeding before the Chief of Police or the Committee to reply to any question lawfully put to him commits a criminal offence punishable with a monetary punishment not exceeding £200.—:

Provided that no witness is obliged to answer any questions tending to incriminate him or make him liable to the payment of a fine or seizure of his property.

34. *Decision of the Committee.*

The Committee by its decision may find a Senior Officer guilty of any offence for which he is charged and impose on him any one of the disciplinary punishments which the circumstances of the case might justify or discharge him of the charge. Every decision of the Committee is taken by majority and is signed by the Presiding Officer.

35.. *Punishments.*

The following disciplinary punishments may be imposed by the Committee:

(a) Reprimand,

(b) severe reprimand,

(c) a fine not exceeding £100.—,

(d) withholding, stoppage or deferment of increment,

(e) reduction in rank or grade,

(f) requirement to resign,

(g) dismissal.

36. *Review of punishment by Minister.*

(1) In every case in which a Senior Officer is found guilty of a disciplinary offence, his conviction and the punishment imposed on him are reviewed by the Minister.

Upon review the Minister may—

(a) discharge the Senior Officer of the conviction and/or punishment,

(b) vary the decision or punishment,

(c) reduce or increase the punishment,

(d) confirm the decision or punishment:

Provided that the Minister upon review of a punishment imposed by the Chief of police may impose only a punishment provided for under rugulation 30.

(2) Any punishment imposed by the Chief of Police or the Committee is not executory except upon its revision and confirmation by the Minister.

37. *Minutes of proceedings.*

During the hearing of a case by the Chief of police or

the Committee, and upon revision by the Minister, minutes of proceedings are kept.

38. *Appeals.*

A Senior Officer against whom a decision after a review was given under regulation 36 may, within seven days from the date of such judgment, appeal to the Council of Ministers whose judgment shall be final").

The first submission of counsel for applicant in arguing the case is that the Disciplinary Committee, which was appointed by the Minister was wrongly constituted as it was entirely composed of Members of the Police Force and did not contain any Member of the Public Service. According to his own interpretation of regulation 32, this Committee should be a mixed committee of Public Servants and Members of the Police Force.

I have considered the wording of this regulation and I must say that I do not agree with the interpretation given by counsel for applicant. The purpose of insertion of the words "including the force" in regulation 32 was to cover Police Officers who otherwise would be excluded, as Members of the Police Force are not considered as Public Servants, according to the definition appearing in section 2 of the Public Service Law, 1967 (Law 33/67). This definition is as follows:

"'Public Service' means any service under the Republic other than the Judicial Service of the Republic or Service in the Armed or Security Forces of the Republic or Service in the Office of Attorney-General of the Republic or Auditor-General or Accountant-General or their deputies or service in any office in respect of which other provision in made by Law or service by persons whose remuneration is calculated on a daily basis".

So, the Disciplinary Committee may be composed either of Public Servants or Police Officers, or both. And, therefore, the Disciplinary Committee in the present case, which was composed solely of Police Officers, was not wrongly constituted.

The next argument of counsel for applicant was that the Minister in reviewing the case under regulation 36 took into account a disciplinary offence for which the applicant was charged but was not convicted, as proceedings against him were

suspended due to the coup d'etat and the Turkish Invasion that followed.

It is quite true that the Minister in examining as to whether the sentence imposed by the Disciplinary Committee on the applicant was excessive, did not only make reference to his previous convictions but also referred to the fact that on the 29th day of August, 1973, the applicant was interdicted for a serious offence, i.e. for insulting the then President of the Republic. Although, as it appears from the decision of the Minister this fact might have had some bearing on the matter, yet, I am not going to pronounce on it since this Court, as an administrative Court, has no jurisdiction to decide on the question of sentence as to whether it is excessive or nor. This is clear from the wording of Article 146.4 of the Constitution, which reads as follows:-

> "146.4.—Upon such a recourse the Court may, by its decision—
>
> (a) confirm, either in whole or in part, such decision or act or omission; or
>
> (b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever; or
>
> (c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed."

Another submission of counsel for applicant is that the principles of natural justice in the proceedings before the Council of Ministers have been violated as the applicant was not invited to express his views and so he was deprived of the right to be heard. He submitted that under regulation 38 the Council of Ministers was acting in a quasi judicial capacity and so it was bound to invite the applicant to be heard.

It is not in dispute that the Council of Ministers in issuing the decision complained of, did not hear the applicant or his advocate, but it had before it only the record of proceedings before the Disciplinary Committee and the Minister as well as the grounds on which the appeal against the decision of the Minister was based.

On this point, on the other hand, counsel for the respondents submitted that under regulation 38 the Council of Ministers

was acting as a hierarchically superior organ exercising administrative powers and the appeal filed before it is nothing else but a hierarchical recourse provided by law and in such a case the party affected has a right to be heard. To this principle, however, there is an exception in that where the opportunity to the person affected is given to submit in writing his views, it is considered that the right to be heard is satisfied. In the present case as it appears from Appendix B of the Submission to the Council of Ministers, *exhibit* 2, this procedure was followed and the views of the applicant were expressed in the grounds of appeal which were submitted on 3rd May, 1978 through his advocate.

Appendix B of *exhibit* 2 consists of:

(i) a letter addressed to the Council of Ministers by counsel for applicant dated 10th March, 1978, by which notice was given that the applicant was appealing against the decision of the Minister and stated therein that he was reserving the right to submit in detail before the Council of Ministers the legal points of the case at the hearing;

(ii) a letter dated 4th April, 1978, addressed by the Director-General of the Ministry of Interior to counsel for applicant to which the record of proceedings before the Disciplinary Board and the Minister were attached, informing him that he had to state the grounds on which the appeal was based so as to be able to submit the case before the Council of Ministers; and

(iii) a letter addressed to the Director-General of the Ministry of Interior by counsel for applicant dated 3/5/78 containing the grounds of appeal with the request that they should be transmitted to the Council of Ministers.

The grounds of appeal are the following:

(a) The Honourable Minister of Interior wrongly took into consideration a case against the applicant which was not tried and connected it with the present case.

(b) Since the Honourable Minister in the reasoning of his decision reached the conclusion that the fault of the applicant "was at first sight rather insignificant", the confirmation by him of the imposed sentence of dismis-

sal from the ranks of the Police Force, was entirely disproportionate to the offence committed by the appellant and ought to be cancelled.

There is no doubt that where we are concerned with disciplinary proceedings before the Council of Ministers as a hierarchically superior organ, as in the present case, the rules of natural justice, which under Article 12 of our Constitution are applicable to offences in general, should be followed. Consequently, the applicant had a right to be heard. (*Nicolaos D. Haros* v. *The Republic*, 4 R.S.C.C. 39). However, it is not necessary for an applicant to be heard before the Council of Ministers viva voce, as in open Court, but this right should be considered as fully satisfied if he were invited to submit his views in writing. This proposition finds support in the Right of Defence Before the Administrative Authorities by Stasinopoulos, 1974 edition, pages 173 to 175.

Therefore, the question posed in the case in hand is whether by the two grounds of appeal appearing in Appendix B of *exhibit* 2, the rules of natural justice have been observed. The answer should be in the negative. It cannot be said that by the letter of the 4th April, 1978, addressed by the Director-General of the Ministry of Interior and Defence to counsel for applicant to the effect that he had to state the grounds on which his appeal was based, the right to be heard was satisfied. He should also be asked to express his views and give reasons in support of the said ground. The net result is that in the present case there is a violation of the rules of natural justice and so the decision of the Council of Ministers complained of should be, and it is hereby declared null and void. It is up to the Council of Ministers to reconsider its decision in the light of this judgment.

In view of my above decision on this ground, I consider it unnecessary to deal with the other grounds submitted on behalf of the applicant.

As regards costs, the respondent Authority is adjudged to pay to the applicant £20.—against his costs.

Sub judice decision annulled.
Order for costs as above.