1980 July 9

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

MIKIS MICHAELIDES,

*Applicant,*

*v.*

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

*Respondents.*

*(Case No. 145/78).*

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*Disciplinary offences—Violating secrecy of the service—Section 65 of the Public Service Law, 1967 (Law 33/67)—Ingredients of the offence—Offence committed only if information is communicated to persons outside the service.*

*Administrative Law—Public officers—Disciplinary offences—Single disciplinary punishment for several disciplinary offences—Annulment of disciplinary decision in relation to one such offence—Whole of the disciplinary decision rendered voidable.*

*Disciplinary offences—Disciplinary punishment—Single punishment for several offences—Annulment of decision relating to one such offence—Whole of the disciplinary decision rendered voidable.*

The applicant, a deciphering officer in the Ministry of Foreign Affairs, was found guilty by the respondent Public Service Commission on three disciplinary offences, one of which included the offence of violating the secrecy of the service, contrary to section 65(1)* of the Public Service Law, 1967 (Law 33/67) and was punished with the sentence of compulsory retirement from the service for all the three offences.

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* Section 65(1) reads:

"(1) All information written or oral which has come to the knowledge of a public officer in the course of the performance of his duties shall be confidential and shall not be communicated to any person except for the proper performance of official duty or on the express direction of the appropriate authority concerned".

The particulars of the above offence were that the applicant has photo-copied, without authority, a confidential document. Upon a recourse against the above decision of the Commission counsel for the applicant mainly contended that even if the document in question was photographed by the applicant once it was never communicated or used outside the service, no disciplinary charge could be made or established against the applicant of that offence.

*Held*, that for the offence of violating the secrecy of the service to be committed there must be communication of the official document to persons outside the service; that in this particular case there was no communication or leakage of the said official document to any person outside the service; that, therefore, the Commission wrongly found the applicant guilty of the offence under section 65 of Law 33/67; and that, accordingly, the *sub judice* punishment must be annulled.

*Held*, further, that the disciplinary decision in this case, whereby several disciplinary offences by the applicant were punished by a single sentence, is rendered voidable as a whole even if only one of such offences could not in law constitute a disciplinary offence because it becomes uncertain whether the disciplinary organ would have imposed the same sentence solely for the other acts which really constitute disciplinary offences. (See Kyriakopoulos on the "Law of Civil Servants" 1954 at p. 289).

*Sub judice decision annulled.*

Cases referred to:

*Rex v. M.* (1915) 32 T.L.R. 1, C.C.A.

**Recourse.**

Recourse against the decision of the respondents to convict the applicant on three disciplinary offences and pass on him a sentence of compulsory retirement.

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

*A.M. Angelides*, Counsel of the Republic, for the respondents.

*Cur. adv. vult.*

HADJIANASTASSIOU J. read the following judgment. Time and again it is said that the Supreme Court has exclusive jurisdiction to adjudicate finally on a recourse made to it on a com-

plaint 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.

On 14th April, 1978, the applicant, Mikis Michaelides, feeling aggrieved because of his disciplinary punishment viz., his dismissal from the service by the respondent Commission filed the present recourse claiming the following relief: A declaration of the honourable Court that the decision of respondents to convict applicant on three disciplinary offences and pass a sentence of compulsory retirement on him which was communicated to applicant by letter dated 27th January, 1978 by the respondents, should be declared null and void and of no effect whatsoever.

The applicant has been appointed in the public service in 1960 to the Ministry of Foreign Affairs. Since the 19th May, 1961, he has been holding the post of a deciphering officer in the said Ministry. On 18th October, 1976, a criminal investigation was initiated against him and on 19th October, 1976 the applicant was arrested on the strength of a judicial warrant, but before his arrest he was asked to give a statement to the police. After his arrest he gave another statement to the police, and an investigating officer has been appointed on 22nd October, 1976 and the officer concerned was notified of his appointment by the Council of Ministers on 26th October, 1976. On 20th October, 1976, the Commission at its meeting having considered the contents of a letter addressed to them by the Director-General of the Ministry of Foreign Affairs, decided that the applicant should be interdicted from the exercise of the powers and functions of his office pending a police investigation, and until the final disposal of his case. The applicant was informed accordingly by a letter dated 20th October, 1976. On 21st December, 1976, the Director-General of the same ministry by a letter submitted the report of the investigating officer together with other supporting evidence as well as the disciplinary charges framed by the Attorney-General for the Commission to take action in accordance with the provisions of s. 82(2) of the Public Service Law 1967 (Law No. 33/67).

On 23rd December, 1976, the Commission at its meeting decided that action should be taken under the relevant provision of the Public Service Law and the case was fixed for plea on

17th January, 1977. On that date the Commission having considered the preliminary objections raised by counsel for the applicant adjourned the case; and on 29th January, 1977, overruled the preliminary objections raised, and the hearing of the case was fixed on 3rd March, 1977. On that date the hearing of the case was resumed and finally it was concluded, after some adjournments, on 21st July, 1977. The Commission having reserved its ruling, which was finally delivered on 17th November 1977, in finding the applicant guilty on the three disciplinary offences against him, had this to say:

" 'Η 'Επιτροπή, άφοῦ ἐμελέτησε μετὰ προσοχῆς τὰς ἐνώπιόν της μαρτυρίας καὶ τὰ σχετικὰ τεκμήρια, εὑρίσκει ὅτι–

(α) κατὰ τὸν οὐσιώδη χρόνον τὸν ἀναφερόμενον ἐν τῇ πρώτῃ κατηγορίᾳ ὁ καθ' οὗ αἱ κατηγορίαι ἔδωσε συνεντεύξεις καὶ/ἢ ἀπαντοῦσε ἐπὶ θεμάτων ὑπηρεσιακῆς φύσεως εἰς ἐρωτηματολόγια προσώπων εἰς τὴν ὑπηρεσίαν ἄλλου Κράτους. Σχετικαὶ πρὸς τοῦτο εἶναι αἱ μαρτυρίαι τῶν κ.κ. Μουρουζίδη καὶ Πελαγίας, τὰς ὁποίας ἡ 'Επιτροπὴ ἐποδέχεται καὶ ἐξ ὧν προκύπτει ὅτι αἱ ἐνέργειαι τοῦ κατηγορουμένου ἀποσκοποῦσαν εἰς τὴν ἐξυπηρέτησιν ξένων ὑπηρεσιῶν. 'Επὶ πλέον, ὁ ἴδιος ὁ κατηγορούμενος παρεδέχθη τὰς ἐν λόγῳ ἐνεργείας του.

(β) κατὰ τὸν οὐσιώδη χρόνον τὸν ἀναφερόμενον ἐν τῇ δευτέρᾳ κατηγορίᾳ ὁ κατηγορούμενος ἐφωτοτύπησε, ἄνευ ἐξουσιοδοτήσεως ἀντίγραφον τοῦ ἄκρως ἀπορρήτου τηλετυπικοῦ μηνύματος ὑπ' ἀρ. 318/76. Σχετικὴ πρὸς τοῦτο εἶναι ἡ μαρτυρία τοῦ Κλητῆρος 'Ανδρέα 'Ορφανοῦ, ἥτις ἔγινε δεκτὴ ὑπὸ τῆς 'Επιτροπῆς, καὶ ὅστις ὅταν ἠνοιξε τὸ Γραφεῖον πρῶτος τὴν πρωΐαν τῆς 18.10.76 ἀνεῦρε ἐπὶ τοῦ ἐδάφους τὸ ἀντίγραφον, χρώματος ροζ, τοῦ ἐν λόγῳ μηνύματος καὶ τὸ ὁποῖον ἐν συνεχείᾳ παρέδωσε εἰς τὸν κ. 'Αλλαγιώτην, 'Αρχειοφύλακα 'Εμπιστευτικοῦ 'Αρχείου τοῦ 'Υπουργείου 'Εξωτερικῶν. 'Ενδεικτικὴ εἶναι ὡσαύτως ἡ μαρτυρία τοῦ κ. Σελίπα, ἡ ὁποία ἐπίσης γίνεται δεκτὴ ὑπὸ τῆς 'Επιτροπῆς, καὶ ὁ ὁποῖος κατόπιν ἐρεύνης εἰς τὸν κάλαθον τῶν ἀχρήστων τοῦ δωματίου τῆς τηλετυπικῆς ὑπηρεσίας, ἀνεῦρε τὸ τσαλακωμένον ἀντίγραφον τοῦ ἰδίου μηνύματος καὶ τὸ ὁποῖον, βάσει τῆς μαρτυρίας τοῦ κ. 'Αλλαγιώτη, θὰ ἔπρεπε νὰ ἐφυλάττετο εἰς εἰδικὸν χρηματοκιβώτιον τῆς τηλετυπικῆς ὑπηρεσίας τοῦ ὁποίου τὸ κλειδὶ εἶχε

πάντοτε ὑπὸ τὴν φύλαξίν του ὁ κατηγορούμενος ἔστω καὶ ἐὰν οὗτος εὑρίσκεται ἐπ' ἀδείᾳ ἢ ἐκτὸς ὑπηρεσίας. Ὡσαύτως, ἐκ τῆς μαρτυρίας τοῦ κ. Βυρίδη καταφαίνεται ὅτι οὐδεμία ἔγκρισις ὑπῆρχε διὰ τὴν φωτοτύπησιν ἀντιγράφου τοῦ περὶ οὗ ὁ λόγος μηνύματος. Σχετικὴ πρὸς τοῦτο εἶναι καὶ ἡ παραδοχὴ τοῦ κατηγορουμένου διὰ τὴν διάπραξιν τοῦ ἰδίου ἀδικήματος. Ἂν καὶ ἡ Ὑπεράσπισις ἰσχυρίσθη ὅτι τὸ ἀναφερόμενον εἰς τὸ Κατηγορητήριον ἔγγραφον δὲν ἠδύνατο νὰ θεωρηθῇ ὡς ἀπόρρητον καὶ τοῦτο ἀφ' ἑνὸς λόγῳ τοῦ περιεχομένου του καὶ ἀφ' ἑτέρου λόγῳ τῆς δημοσιεύσεώς του εἰς τὴν Ἐφημερίδα "Φιλελεύθερος", ἡ Ἐπιτροπὴ εἶναι τῆς γνώμης ὅτι ἐὰν καὶ κατὰ πόσον ἦν ἔγγραφον εἶναι ἀπόρρητον ἢ ὄχι, τοῦτο δὲν εἶναι ἔργον τοῦ ὑπαλλήλου νὰ ἀποφασίσῃ, προσέτι δὲ οὗτος ὑπέχει ὑποχρέωσιν, ἀνεξαρτήτως οἱασδήποτε προσωπικῆς του γνώμης, νὰ θεωρῇ ἓν ἔγγραφον ὡς ἀπόρρητον ὁσάκις τοῦτο περιγράφεται ὡς τοιοῦτο· καὶ

(γ) κατὰ τὸν οὐσιώδη χρόνον τὸν ἀναφερόμενον ἐν τῇ τρίτῃ κατηγορίᾳ ὁ κατηγορούμενος προέβη εἰς συνεργασίαν ἐπὶ ὑπηρεσιακῶν θεμάτων μετὰ μὴ ἐξουσιοδοτημένων προσώπων ἤτοι τῶν Ροζάνη καὶ Πίκου ΚΥΠ Ἑλλάδος, τοῦτο δὲ παρεδέχθη ὁ ἴδιος πρὸς τοὺς κ.κ. Μουρουζίδην καὶ Πελαγίας οἵτινες ἐμαρτύρησαν τοῦτο ἐνώπιον τῆς Ἐπιτροπῆς κατὰ τὴν ἀκρόασιν τῆς ὑποθέσεως.

Ἐν ὄψει τῶν προαναφερθέντων ἡ Ἐπιτροπὴ εὑρίσκει τὸν κατηγορούμενον ἔνοχον ἐπὶ τῶν ἐν λόγῳ τριῶν κατηγοριῶν.

Ὡς ἐκ τούτου ἡ Ἐπιτροπὴ ἀπεφάσισεν ὅπως, πρὶν ἢ χωρήσῃ εἰς τὴν ἐπιβολὴν πειθαρχικῆς ποινῆς, παράσχῃ εἰς τὸν κατηγορούμενον τὴν εὐκαιρίαν νὰ προτάξῃ ἐνώπιον αὐτῆς οἱουσδήποτε λόγους θὰ εἶχε πρὸς μετριασμὸν τῆς ἐπιβληθησομένης εἰς αὐτὸν πειθαρχικῆς ποινῆς καὶ ὅπως πρὸς τὸν σκοπὸν τοῦτον καλέσῃ αὐτὸν ὅπως ἐμφανισθῇ ἐνώπιόν της κατὰ τὴν 29ην Νοεμβρίου, 1977, καὶ ὥραν 11.30 π.μ."

And in English it reads:

"The Commission, having carefully considered the evidence before it and the relevant *exhibits*, finds that

(a) Regarding the first charge, during the relevant period

the accused gave interviews and/or replied to questions on subjects of a service nature, put to him by persons serving with another state. Relevant to this is the evidence of Messrs. Mourouzides and Pelayias, which the Commission accepts, and from which it appears that the actions of the accused had the purpose of serving foreign services. Furthermore, the accused admitted the said activities;

(b) during the relevant period which is mentioned in the second charge the accused has photo-copied without authority, a copy of a highly confidential telex communication under No. 318/76. Relevant to that was the evidence of messenger Andreas Orphanou which has been accepted by the Commission, and who, when he opened the office first on the morning of the 18th October, 1976, he found a photo copy in colour pink of the said message on the floor and which he delivered to Mr. Allayiotis, the archivist of the confidential archives of the Ministry of Foreign Affairs. Indicative is also the evidence of Mr. Selipas which is also accepted by the Commission and who, having searched the waste-paper-basket in the telecommunications service room found the crushed copy of the said message, and which, according to the evidence of Mr. Allayiotis ought to have been kept in a special safebox of the telecommunications service, the key of which was kept always by the accused, even if he was on leave or away from the office. In addition, from the evidence of Mr. Virides, it appears that he had no authorization whatsoever to photo copy a copy of the said message. Relevant to that is also the admission of the accused to the Commision of the said offence. Even though the defence has alleged that the document referred to in the charge could not have been considered as being of a confidential nature, on the one hand because of its contents, and on the other hand because it was published in the paper "Fileleftheros", the Commission is of the opinion, that if and whether a document is of a confidential nature or not it is not the task of an officer to decide; because that officer has an obligation, irrespective of any personal opinion, to treat a

document as being confidential once that document is described as such; and

(c) during the relevant period which is referred to in the third charge, the accused had co-operated on service matters together with unauthorized persons viz., Rosaki and Pikou of KYP, of Greece, and that was admitted to by him to Messrs. Mourouzides and Pelayias who gave evidence before the Commission during the hearing of the case.

In view of the aforesaid, the Commission finds the accused guilty on the said three charges.

As a result, the Commission has decided, before it proceeds to the imposition of disciplinary punishment, to offer the accused an opportunity to put before it whatever reasons he may have in mitigation of the disciplinary punishment which would be imposed on him, and for that purpose, he would be called to appear before it on the 29th November, 1977, at 11.30 a.m."

On 23rd January, 1978, the Commission having heard the arguments of counsel in mitigation, had this to say in Greek regarding the punishment imposed on the applicant:

"'Η 'Επιτροπὴ Δημοσίας 'Υπηρεσίας ἤκουσε μετὰ προσοχῆς ἅπαντα τὰ λεχθέντα ὑπὸ τοῦ Δικηγόρου κ. Λ. Κληρίδη, ἐκ μέρους τοῦ κατηγορουμένου (Μιχαὴλ Α. Μιχαηλίδη).

'Η 'Επιτροπὴ εἶναι τῆς γνώμης ὅτι δημόσιος ὑπάλληλος καὶ δὴ κατέχων τὴν θέσιν Κρυπτογράφου πρέπει νὰ εἶναι ἐμπιστος καὶ νὰ εἶναι ἄκρως ἐχέμυθος. 'Η ἔλλειψις τοιούτων προσόντων ἀναμφιβόλως προκαλεῖ ἀνεπανορθώτους δυσμενεῖς ἐπιπτώσεις καὶ κλονίζει τὴν ἐμπιστοσύνην τοῦ κοινοῦ.

"Εχουσα ὑπ' ὄψιν τὰ ἀνωτέρω, ἡ 'Επιτροπὴ θεωρεῖ τὰ ὑπὸ τοῦ κατηγορουμένου διαπραχθέντα ἀδικήματα ὡς λίαν σοβαρὰ καὶ ἀπεφάσισεν ὁμοφώνως ὅπως δι' ἅπαντα τὰ ἐν λόγῳ ἀδικήματα ἐπιβάλη εἰς τὸν κατηγορούμενον τὴν πειθαρχικὴν ποινὴν τῆς ἀναγκαστικῆς ἀφυπηρετήσεως ἐκ τῆς δημοσίας ὑπηρεσίας ἀπὸ τῆς 1ης Φεβρουαρίου, 1978.

'Ωσαύτως δυνάμει τοῦ ἄρθρου 84(3) τοῦ περὶ Δημοσίας 'Υπηρεσίας Νόμου, 'Αρ. 33/67, ἡ 'Επιτροπὴ ἀπεφάσισεν ὅπως

ἐπιστραφῆ εἰς αὐτὸν τὸ σύνολον τῶν κατακρατηθεισῶν ἀπολαβῶν του διαρκούσης τῆς περιόδου τῆς διαθεσιμότητός του".

An in English it reads:

"The Commission has listened carefully to all which has been said by Mr. L. Clerides, the lawyer on behalf of the accused (Michael A. Michaelides).

The Commission is of the opinion that a public servant and particularly one who holds the position of ciphering officer, must be trustworthy and also very reticent. The lack of such qualifications no doubt causes irreparable adverse consequences on the Government's actions and activities in general and shakes the confidence of the public.

With that in mind the Commission considers the acts committed by the accused as very serious and has unanimously decided to impose on the accused the disciplinary punishment of compulsory retirement from the public service as from 1st February, 1978, for all the said charges.

In addition, in accordance with the provisions of s. 84(3) of the Public Service Law, (No. 33/67), the Commission has decided to return to him the whole of the amount representing his emoluments withheld during the period of his interdiction."

I find it convenient to state that I am in agreement with the Commission that it is not for any public officer, who has been entrusted with documents of a confidential nature to decide whether or not such documents are of a confidential nature, once the documents are described as confidential. Unfortunately, however, the Commission did not proceed to deal with the second leg of the argument of counsel who clearly pointed out that irrespective of that, and once the document in question was photographed by the applicant but it was never communicated or used outside the service, then no disciplinary charge could be made or established against the applicant on that offence.

Regretfully, however, the Commission, after a long and protracted trial found the applicant guilty of violating the secrecy of the service regarding official information but without dealing

with the whole submission of counsel. The Commission, apparently, was wrongly satisfied from the evidence before it that the applicant in photographing the said confidential document was intending to communicate it to the foreign agents of another country and found him guilty without enquiring as to whether there was actual communication to those persons. Indeed, one can go further and state that even if there was a leakage to the public officers who gave evidence before it, again the Commission wrongly came to the conclusion that an offence had been committed because our Law says that there must be communication to the foreign agents outside the service.

There is no doubt that our Law demands that every public officer who has been entrusted with official confidential information is under a duty not to communicate to any person, outside the service, such information received by him in the course of his service. Section 65 of the Public Service Law, 1967 (No. 33/67) says:

"(1) All information written or oral which has come to the knowledge of a public officer in the course of the performance of his duties shall be confidential and shall not be communicated to any person except for the proper performance of official duty or on the express direction of the appropriate authority concerned.

(2) When a public officer is served with a summons to give evidence on a matter relating to the performance of his duties or to produce an official document in his custody he shall refer the matter to the appropriate authority concerned for determination whether the giving of such evidence or the production of such document would be contrary to the public interest; and such appropriate authority shall, after consulting the Attorney-General of the Republic, determine the matter accordingly."

Then I turn to the Disciplinary Code regarding disciplinary proceedings and section 73 says that:

"(1) A public officer is liable to disciplinary proceedings if—

(a) he commits an offence of dishonesty or involving moral turpitude;

(b) he commits an act or omission amounting to a contravention of any of the duties or obligations of a public officer; and

(2) For the purposes of this section 'duties or obligations of a public officer' includes any duty or obligation imposed on a public officer under the law of the Republic or under this Law or any other law in force for the time being or under any public instrument made thereunder or under any order or direction issued."

It is interesting to note that the Official Secrets Act 1911, section (1) says:

"If any person for any purpose prejudicial to the safety or interests of the State—

(a) .....

(b) ..... ; or

(c) obtains, (collects, records, or publishes,) or communicates to any other person (any secret official code word, or pass word, or) any sketch, plan, model, article, or note, or other document or information which is calculated to be or might be or is intended to be directly or indirectly useful to an enemy;

he shall be guilty of felony..."

For the reasons I have given, I have reached the conclusion that the Commission has erred in law and in fact, and as I find myself in agreement with the contentions of counsel for the applicant, that in this particular case there was no communication or leakage of the said official document outside the service, the applicant, I repeat, was wrongly found guilty of section 65 of Law 33/67, once no communication was made to anyone, and particularly with the foreign agents referred to by the Commission. If authority is needed, I think the case of *Rex* v. *M.* (1915) 32 T.L.R. 1, C.C.A. provides the answer to the present case. Mr. Justice Darling, delivering the judgment of the Court, had this to say regarding misdirection:

"The last ground was that there was misdirection by the learned Lord Chief Justice when he told the jury that it

was immaterial whether the information communicated by the appellant was true or false. The Court thought that the direction was correct. As the Attorney-General expressed it at the trial, the appellant, when he had chosen to give information, took the risk whether it was true or untrue, useful to the enemy, or otherwise. To hold differently would be to impose on the prosecution an impossible task. To prove that the information assisted the enemy it would be necessary first to ascertain what information the enemy possessed before receipt of it."

Having stated what are the ingredients of our law and because I have been invited by both counsel not to deal with the other two offences, because in their view, the most serious one was the one from which the applicant was acquitted, I have decided to acceed to their request, which is line with a statement made by Professor Kyriakopoulos on the "Law of Civil Servants" 1954 Edn., on the nature of disciplinary offences, at p. 289:

" 'Οσάκις μὴ συντρεχούσης παραλλήλου προσφυγῆς, προσβάλλεται πειθαρχικὴ τις ἀπόφασις δι' αἰτήσεως ἀκυρώσεως, ἡ τοιαύτη προσβολὴ προκαλεῖ καὶ τὸν ἔλεγχον τῆς νομιμότητος ὁλοκλήρου τῆς πειθαρχικῆς διαδικασίας καὶ τῶν ἐν αὐτῇ ἐμπιπτουσῶν πράξεων[1]. Τὸ Σ.τ.Ε. ἐν τῇ ἀκυρωτικῇ αὐτοῦ δικαιοδοσίᾳ, δὲν ἐλέγχει τὴν κρίσιν τοῦ πειθαρχικοῦ δικαστοῦ περὶ τῆς βαρύτητος τοῦ παραπτώματος καὶ τῆς ἐπιβληθείσης ποινῆς, διότι ταῦτα ἀπόκεινται εἰς τὴν ἐλευθέραν ἐκτίμησιν τοῦ δικάσαντος ὀργάνου[2]. 'Ελέγχον ὅμως ἀπὸ ἀπόψεως νομιμότητος τὴν ἐλευθέραν ἐκτίμησιν τοῦ πειθαρχικοῦ δικαστοῦ, δικαιοῦται νὰ ἐρευνήσῃ μὴ οὗτος περιέπεσεν εἰς πλάνην περὶ τὰ πράγματα. 'Εν τῇ περιπτώσει ταύτῃ τὸ Σ.τ.Ε. ἀποβλέπει εἰς τὰ πραγματικὰ περιστατικὰ ἐπὶ τῷ τέλει ὅπως ἐξακριβώσῃ ἂν ὀρθῶς ἐφηρμόσθη ὁ νόμος καὶ δὲν ἐπλανήθη τὸ δικάσαν ὄργανον δεχθὲν ὡς γεγονότα περιστατικά, τὰ ὁποῖα ἀποδεδειγμένως δὲν ὑφίστανται ἐν τοῖς πράγμασι[3], καὶ οὐχὶ ἵνα ἀποφανθῇ ἐπ' αὐτῶν ὡς δικαστήριον οὐσίας.....

1. Σ.Ε. 710/1933, 102/1934 κ.ἄ.
2. Σ.Ε. 28, 204, 329/1930, 186, 630/1932, 2, 186, 266, 903/1933, 118/1934 κ.ἄ.
3. Σ.Ε. 453, 538, 562, 790, 888/1933, 1001/1934 κ.ἄ.π.

Κατ' ἀκολουθίαν τῶν ἀνωτέρω ἐκτεθέντων, δέον νὰ δεχθῶμεν, ὅτι πειθαρχικὴ ἀπόφασις, δι' ἧς κολάζονται δι' ἐνιαίας ποινῆς πλείονα πειθαρχικὰ ἀδικήματα τοῦ ὑπαλλήλου, καθίστανται ἀκυρωτέα ἐὰν, ἔστω καὶ ἓν τούτων, δὲν συνιστᾷ κατὰ νόμον πειθαρχικὸν ἀδίκημα· διότι ἄδηλον καθίσταται ἂν τὸ πειθαρχικὸν ὄργανον θὰ ἐπέβαλε τὴν αὐτὴν ποινὴν μόνον διὰ τὰς λοιπὰς πράξεις, αἱ ὁποῖαι συνιστῶσιν ὄντως πειθαρχικὰ ἀδικήματα[1]".

And in english it reads:

"Whenever a parallel recourse not being available, a disciplinary decision is attacked by recourse for annulment, such recourse brings about the examination of the legality of the entire administrative procedure as well as the acts falling within it. The Council of State in its annulling jurisdiction, does not check the judgment of the disciplinary Judge in relation to the gravity of the offence, and the punishment to be imposed, because these matters fall within the free evaluation of the trial organ. But checking from the point of legality, the free evaluation of the disciplinary Judge, it is entitled to investigate whether he misconceived the facts. In such a case the Council of State looks to the real facts in order to ascertain if the law has been applied correctly, and the trial organ has not been wrong in accepting as facts matters which have been proved not really to exist, and not so as to adjudicate upon them as a Court of substance.....

In view of the above, we must accept that a disciplinary decision by which several disciplinary offences of the officer are punished by a single sentence, is rendered voidable if, even one of them does not constitute a disciplinary offence according to the law; because it becomes uncertain whether the disciplinary organ would have imposed the same sentence solely for the other acts which really constitute disciplinary offences."

For all these reasons, and indeed because of the excellent work done by both counsel in arguing their case, I feel I should not complete this judgment without expressing my indebtedness to both counsel.

1. Σ.Ε. 368, 519/1932, 852/1933, 414, 775, 1158/1934 κ.ἀ.

In the light of the authorities I have reached the conclusion that the decision of the Commission is contrary to the provisions of our Law and was made in excess or in abuse of powers vested in the Commission.

Decision annulled but in the particular circumstances of this case I am not making an order for costs. 5

*Sub judice decision annulled. No order as to costs.*