

1980 December 3

[TRIANTAFYLIDIS, P., L. LOIZOU, HADJIANASTASSIOU,
A. LOIZOU, DEMETRIADES, JJ.]

CHARALAMBOS SAVVA,

Appellant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS AND OTHERS,

Respondents

(*Revisional Jurisdiction Appeal No. 210*).

Natural justice—Rules of—Right to be heard—Police Constable required to resign—Not granted his pension benefit—Because Council of Ministers took into account, and was influenced by, information about his participation in the Coup d' etat of July, 1974—No criminal or disciplinary proceedings ever instituted against him—And never given the opportunity to reply to the accusations against him—Above rule of natural justice infringed—Sub justice decision vitiated because of such infringement—Annulled.

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The appellant, a Police Constable, was required to resign by a decision of the Deputy Chief of Police because of disciplinary charges which had been brought against him. The trial Court dismissed his recourse against the refusal of the Council of Ministers to grant to him pension under regulation 45 of the Police (Discipline) Regulations, 1958 to 1977; and hence this appeal.

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It appeared that the appellant was a person who, allegedly, was an active member of the unlawful organization "EOKA B" prior to the abortive coup d' etat in July 1974, and took at the time an active part in such coup. It was common ground that not only there were not ever instituted against the appellant criminal or disciplinary proceedings in relation to the alleged criminal conduct of his but he was never informed about the accusations against him and was never given the opportunity

to reply to them, either orally or in writing, so that the Council of Ministers would have before it his own version too.

Held, that in the absence of any indication to the contrary, this Court has, in the circumstances, to assume that the Council of Ministers took into account, and was substantially influenced 5
by, the aforementioned accusations against the appellant, and, in view of the fact that the appellant was never given an opportunity to reply, in any way whatsoever, to such accusations, there has occurred an infringement of the basic rule of natural justice 10
which required that the appellant should have been given a chance to be heard before being treated in the manner about which he is now complaining; that, consequently, the *sub judice* decision of the Council of Ministers by means of which he was refused a pension is vitiated by the aforesaid failure to afford him an opportunity to be heard and it has to be declared to be 15
null and void and of no effect whatsoever; accordingly the appeal must be allowed.

Appeal allowed.

Appeal.

Appeal against the judgment* of a Judge of the Supreme Court 20
of Cyprus (Malachtos, J.) given on the 26th June, 1979 (Revisional Jurisdiction Case No. 318/78) whereby appellant's recourse against the decision of the respondents not to grant applicant pension as a result of his compulsory retirement from the ranks of the Police Force was dismissed. 25

E. Efstathiou with *C. Loizou*, for the appellant.

R. Gavrielides, Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment of the Court. The appellant in this case was a police constable who enlisted 30
in 1957 and who, on September 18, 1976, was required to resign from the Police Force, by a decision of the Deputy Chief of Police, because of disciplinary charges which had been preferred against him.

Subsequently he applied to the Government to be granted 35
a pension under regulation 45 of the Police (Discipline) Regulations, 1958 to 1977.

* Reported in (1979) 3 C.L.R. 250.

His request was rejected by a decision of the Council of Ministers taken on May 4, 1978, and against that decision he filed a recourse which was heard in the first instance by a Judge of this Court; the recourse was dismissed and against the judgment dismissing it the present appeal was filed.

One of the points in issue is whether on a proper construction of the aforementioned regulation 45 it was rightly held by the learned trial Judge that the Council of Ministers had a discretionary power to refuse altogether a pension to the appellant.

This is an issue which is not free from difficulty and, as in the present case we think that we do not have to pronounce finally on it, we have decided to leave it open.

Assuming that the Council of Ministers had a discretionary power, as aforesaid, we are faced with the situation that on the basis of the material which was placed before the Council of Ministers, by way of the submission made to it and of the documents which were appended to it, it appears that the appellant is a person who, allegedly, was an active member of the unlawful organization "EOKA B" prior to the abortive coup d'etat in July 1974, and took at the time an active part in such coup.

It is common ground that, as has been very fairly stated by counsel for the respondents, not only there were not ever instituted against the appellant criminal or disciplinary proceedings in relation to the alleged criminal conduct of his—which is, obviously, a matter of a very serious nature—but he was never informed about the accusations against him and was never given the opportunity to reply to them, either orally or in writing, so that the Council of Ministers would have before it his own version too.

In the absence of any indication to the contrary, we have, in the circumstances, to assume that the Council of Ministers took into account, and was substantially influenced by, the aforementioned accusations against the appellant, and, in view of the fact that the appellant was never given an opportunity to reply, in any way whatsoever, to such accusations, we are of the opinion that there has occurred an infringement of the basic rule of natural justice which required that the appellant should have been given a chance to be heard before being treated in the manner about which he is now complaining.

Consequently the *sub judice* decision of the Council of Ministers by means of which he was refused a pension is vitiated by the aforesaid failure to afford him an opportunity to be heard and it has to be declared to be null and void and of no effect whatsoever.

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As a result this appeal is allowed on this ground.

In the light of all relevant considerations we think that the better course is to make no order as to costs.

Appeal allowed. No order as to costs.

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