1982 March 11

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS KAZAMIAS,

*Applicant,*

*v.*

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

*Respondent.*

(*Case No.* 234/81).

*Administrative Law—Administrative acts or decisions—Reasoning —Need for due reasoning—Decision of Council of Ministers terminating Public Officer's services in the public interest, in exercise of powers under sections 6(f) and 7 of the Pensions Law, Cap. 311—Invoking allegations of unbecoming conduct on the part of the officer without mentioning particulars of such allegations, or the evidence on which the Council of Ministers relied, or any surrounding circumstances and failing to specify the matters of public interest—Reasons mentioned in the decision not such as to enable in the first instance, the person concerned, and the Court on review, to ascertain whether the decision is well founded in fact and in Law—Sub judice decision not properly or sufficiently reasoned—Annulled.*

*Administrative Law—Administrative acts or decisions—Reasoning —Administrative decision taken in the public interest—A general averment of public interest does not amount to a sufficient reasoning —But the invocation of public interest must be justified with a specification of the serious reasons of public interest which are involved.*

*Public interest—Administrative decision taken in the public interest— Invocation of public interest must be justified with a specification of the serious reasons of public interest which are involved.*

*Public officers—Disciplinary control—A matter within exclusive*

*competence of Public Service Commission—Article* 125.1 *of the Constitution—Termination of Public Officer's services, by Council of Ministers, in the public interest in exercise of powers under sections* 6(*f*) *and* 7 *of the Pensions Law, Cap.* 311—*After finding the officer guilty of unbecoming conduct—As such finding amounts to a disciplinary offence under the Public Service Law,* 1967 (*Law* 33/67) *it renders the officer subject to the disciplinary powers of the Public Service Commission for a disciplinary offence under section* 73(1) *of the Law—Council of Ministers by assuming competence in a matter which is within the exclusive competence of the Public Service Commission has acted in excess or abuse of powers—Sub judice decision annulled—There cannot at one and the same time be two authorities with concurrent power to exercise disciplinary control over Public Officers—Even assuming that Council of Ministers had competence to deal with alleged misconduct of officer it was bound to inform the applicant of the accusations against him and give him the opportunity to make his defence in accordance with the "audi alteram partem" rule of natural justice—And as the officer had been in the service prior to independence, in accordance, also, with his terms and conditions of service before Independence, which have been safeguarded by Article* 192.1 *of the Constitution and are afforded to the Officer by regulation* 59 *of the Colonial Regulations.*

*Natural Justice—Rules of—Audi alteram partem—Termination of Public Officer's services, by Council of Ministers, in the public interest, in exercise of powers under sections* 6(f) *and* 7 *of the Pensions Law, Cap.* 311—*After finding him guilty of unbecoming conduct—Predominant purpose of termination of services the imposition on officer of a disciplinary punishment—Assuming Council of Ministers had power to deal with alleged misconduct of officer it ought to inform him of the accusations against him and give him the opportunity to make his defence —Failure to do so amounts to flagrant violation of the above rule of natural justice.*

*Public Officers—Terms and conditions of service—Officers in Public office prior to Independence—Disciplinary control over, governed by Colonial Regulations—Article* 192.1 *of the Constitution.*

*Public Officers—Administrative measure—Disciplinary measure—When an administrative decision assumes the character of a*

*sanction and has adverse effect on the position of an individual person affected should be given the opportunity of questioning the reason for the adverse decision.*

The applicant was appointed in the Public Service on the 24th September, 1941. After a successful career he was promoted to the post of Director-General of the Ministry of Communications and works and continued holding this post till the 11th June, 1981, when the Council of Ministers decided to terminate his services in the public interest. And hence this recourse. The sub judice decision, which was taken in exercise of the Council's powers under sections 6(f)* and 7* of the Pensions Law Cap. 311 (as amended) and was communicated to applicant 1 by letter** of the Minister of Communications and works date 11th June, 1981, reads as follows:

"The Council of Ministers in exercising the powers vested in it by sections 6(f) and 7 of the Pensions Law, Cap. 311 (as later amended), and any other power in this respect vested in it and, after a thorough examination of the material produced in relation 'to the unbecoming conduct' in public of Mr. Panos Adamides, Director-General Ministry of Education and Mr. Panayiotis Kazamias, Director-General of the Ministry of Communications and Works, which offends basically the very subsistence of the State and the proper and unfettered functioning of the State and its Public Service, having taken into consideration the conditions of such Service and the usefulness of the aforesaid public officers thereto and generally all the circumstances,

* Sections 6(f) and 7 read as follows:

"6(f) No pension, gratuity or other allowance shall be granted under this Law to any officer except on his retirement from the public service in one of the following cases:

(f) in the case of termination of employment in the public interest as provided in this Law.

7. Where an officer's service is terminated by the Council of Ministers on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Council of Ministers may, if he thinks fit grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 of this Law".

** The letter is quoted at pp. 249-50 *post*.

came to the conclusion that their stay in the Public Service could not only serve no useful purpose to it, but it would also be very detrimental thereto and decided that their services should be terminated as from today in the public interest, with full retirement benefits, to which they are entitled".

Counsel for the applicant mainly contended:

(a) That the sub judice decision was based on a misconceived and/or illegal reasoning and/or is lacking of sufficient reasoning.

(b) That the sub judice decision was taken in manifest illegality and/or in excess or/and abuse of power in that it involved a manifest violation of the Rules of Natural Justice in that no opportunity to be heard was given to the applicant.

(c) That the sub judice decision was illegal in that it was taken by an incompetent organ and constituted a violation of Articles 122 and 125.1* of the Constitution and of the Public Service Law, 1967 (Law 33/67) and also of the Pensions Law, Cap. 311.

On the other hand Counsel for the respondent Counsel of Ministers in his opposition maintained that the sub judice decision was lawfully taken in the light of the following relevant facts:

(1) The Council of Ministers at its meeting of the 11th June, 1981 decided to terminate the services of the applicant as Director-General of the Ministry of Communications and Works as from 11.6.1981 in the public interest.

(2) The Council of Ministers at its meeting of the 11th June, 1981, took into consideration undisputable facts and information emanating from reliable sources, according to which the applicant publicly and in a manner not

* Article 125.1 of the Constitution provides as follows:

125.1. Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers".

permitted, presented the Republic *as being without head and as lacking of good and able government.*

(3) It is understood that the applicant in this way, undermined ("eklonize") the confidence of the public and of the Public Service in the ability and effectiveness of the supreme organs of the State and thus he undermined the existence of the State.

(4) In the circumstances, it becomes obvious that the usefulness of the applicant in the Public Service, ceased to exist.

(5) The decision of the Council of Ministers for the termination of the services of the applicant which was communicated to him by the letter of the appropriate Minister on the 11.6.1981 was not taken as a disciplinary measure for the punishment of the applicant but as an administrative measure which was necessary in the public interest.

Counsel for applicant, both prior to the hearing by letter, as well as in the course of the hearing, asked to be informed of the source and nature of the material before the Council of Ministers which led it to the conclusion that the conduct of the applicant was unbecoming conduct in public undermining the State and its Public Service, but there was no response to such request.

*Held*, (1)(a) that it is a well established principle of Administrative Law that Administrative decisions have to be duly reasoned; that due reasoning is essential to enable the Courts to carry out properly their function of judicial control of administrative actions; that the sub judice decision is not properly or sufficiently reasoned; that such decision is overshadowed by a cloud of generalities invoking allegations of unbecoming public conduct on the part of the applicant of such nature as to make it necessary in the public interest to impose upon him the ultimate punishment of terminating his permanent appointment with the Government service, without mentioning particulars of such allegations, or the evidence on which the Council of Ministers relied, or any surrounding circumstances and also by failing to specify (έξειδικεύση) the matters of public interest involved; that the reasons mentioned in the decision are not such as the enable in the first instance, the person

concerned, and the Court on review, to ascertain whether the decision is well founded in fact and in law; that the Minister's letter to the applicant conveying to him the decision of the Council of Ministers and the decision itself as recorded in the minutes of the Council of Ministers, are so obscure and substantially inadequate and would leave in the mind of an informed reader such real and substantial doubt as to the reasons for such decision and as to the matters which the Council of Ministers did or did not take into account in taking the sub judice decision, that they do not comply with the well established principles of proper reasoning, compliance to which is necessary under the general and well established principles of administrative law; and that, therefore, the sub judice decision is defective and in the result it must be annulled.

(1)(b) That though in the sub judice decision there was further reference to the decision having been taken in the public interest a general averment of public interest does not amount to a sufficient reasoning but the invocation of public interest must be justified with a specification (ἐξειδίκευσις) of the serious reasons of public interest which are involved (see, in this respect, "Modern Trends of the Principle of Legality in Administrative Law" 1973 Ed., by Tahos, p. 146).

(2)(a) Under Article 125.1 of the Constitution the organ expressly entrusted with the duty of "exercising disciplinary control over, including dismissal or removal from office of, public officers" is the Public Service Commission established under Article 124 of the Constitution; that an organic law was enacted (Law 33/67) providing amongst other things, for the procedure in disciplinary matters (see sections 80, 81 and 82 of Law 33/67); that the fundamental duties of public officers are set out in section 58(1) of Law 33/67 and breach of any such duties constitutes an offence which is included in the disciplinary offences set out in section 73(1) in respect of which disciplinary proceedings may be taken against him and in case he is found guilty to render him liable to the sentences set out in section 79(1); that the finding of the Council of Ministers of unbecoming conduct in public undermining the State and its public service on the part of the applicant, is a finding amounting to the breach of the fundamental duties of a public officer under section 58(1)(b)(d) and (c) of Law 33/67 and rendering him subject to the

disciplinary powers of the Public Service Commission for a disciplinary offence under section 73(1); that disciplinary control of public officers including dismissal is a matter within the exclusive competence of the Public Service Commission.

(2)(b) That the respondent in the present case, as it appears from the minutes of the decision, assumed competence under the provisions of section 7 of Cap. 311 on a disciplinary matter which is within the exclusive competence of the Public Service Commission; that there cannot at one and the same time be two authorities with concurrent power to exercise disciplinary control over public officers, the one an independent organ deriving its powers from the Constitution and the other the Government itself relying on legislative provision; that the object of the introduction in the Constitution of Article 125.1 was to entrust the safeguarding of the efficiency and proper functioning of the public service of the Republic, expressly including the exercise of disciplinary control over public officers, to the Public Service Commission, an independent and impartial organ outside the governmental machinery, and at the same time, safeguarding the protection of the legitimate interests of public officers; that if such power was also retained by the Government, the whole object of Article 125.1 would be defeated and the safeguarding afforded to public officers by such Article would have disappeared; that since disciplinary control over public officers is within the exclusive competence of the Public Service Commission, the Council of Ministers by assuming such competence in the present case, has acted in excess and/or abuse of powers and in the result, the sub judice decision becomes null and void on this ground as well.

*On the assumption that the Council of Ministers had competence to deal with the alleged misconduct of the applicant:*

*Held* (1), that mere perusal of the contents of the sub judice decision as recorded in the Minutes of the Council and of the letter communicating the decision to the applicant and of all surrounding circumstances in mind, leaves no room for doubt that the predominant purpose of the sub judice decision taken by the Council of Ministers was to impose upon the applicant a disciplinary punishment, the most serious one, for alleged public misconduct, without affording him the opportunity of being heard; that even if any doubt might have existed, which

in the present case does not exist, this court would have reached the same conclusion allowing the benefit of doubt to operate in favour of the applicant (see *Pantelidou* v. *Republic*, 4 R.S.C.C. 100); and that, therefore, the respondent was bound to afford the applicant the right to be informed of the accusations against him and the chance to repudiate same.

(2) That, moreover, since applicant had been in the public service prior to Independence and at a time when the Colonial Regulations were regulating the procedure to be followed in case of dismissal of a public officer in the public interest under regulation 59 of such Regulations he had to be informed of the report of the heads of the department in which he had served and be given the opportunity of submitting a reply to the complaints by reason of which his retirement was contemplated; that such provision was part of the terms and conditions of his service which after Independence have been safeguarded under Article 192.1 of the Constitution and could not be altered to his disadvantage; and that, therefore, the Council of Ministers by failing to inform the applicant of the accusations against him and give him the opportunity to make his defence, had acted in flagrant violation of the basic rule of natural justice which is summarised in the maxim "audi alteram partem"; that, also, by depriving him of his vested right under the terms and conditions of service before the Independence day, afforded to him by the Colonial Regulations and in particular regulation 59 which terms and conditions have been safeguarded under Article 192.1 of the Constitution, the Council of Ministers has violated Article 192.1; accordingly the sub judice decision has to be annulled on this ground as well.

*Held*, further, that even in cases where a decision is not of a disciplinary nature but is an administrative measure, as suggested by counsel for the respondent, it is well settled that when an administrative decision assumes the character of a sanction and has sufficiently adverse effect on the position of an individual, as in the circumstances of the present case, the courts require that the person affected should be given the opportunity of questioning the reason for the adverse decision.

*Sub judice decision annulled.*

*Per curiam:* That the power to terminate the service of a public officer prior to independence did not emanate from

sections 6(f) and 7 of the Pensions Law, Cap. 311 but from the Colonial Regulations and that sections 6(f) and 7 were only ancillary provisions enabling the Council of Ministers to grant pension or gratuity in such cases.

Cases referred to:

*McClelland* v. *N. Ireland Health Board* [1957] 2 All E.R. 129 at p. 134,

*Markides* v. *Republic*, 2 R.S.C.C. 8 at p. 12;

*HadjiSavva* v. *Republic* (1972) 3 C.L.R. 174;

*Nedjati* v. *Republic*, 2 R.S.C.C. 78 at p. 82;

*Yiallourou* v. *Republic* (1976) 3 C.L.R. 214 at p. 219;

*Nicolaou* v. *Republic* (1969) 3 C.L.R. 42 at p. 56;

*Papapetrou* v. *Republic*, 2 R.S.C.C. 61 at p. 66;

*Georghiades* v. *Republic* (1966) 3 C.L.R. 252 at p. 276;

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

*Lyssiotou* v. *Papasavva and Another* (1968) 3 C.L.R. 173 at pp. 184–185;

*Rallis* v. *The Greek Communal Chamber*, 5 R.S.C.C. 11;

*Jacovides* v. *Republic* (1966) 3 C.L.R. 212 at p. 221;

*Zavros* v. *Council for Registration of Architects and Civil Engineers* (1969) 3 C.L.R. 310 at p. 315;

*Kasapis* v. *Council for Registration of Architects and Civil Engineers* (1967) 3 C.L.R. 270 at pp. 275, 276;

*Constantinides* v. *Republic* (1967) 3 C.L.R. 7 at p. 14;

*Metaphoriki Eteria* v. *Republic* (1981) 3 C.L.R. 221 at p. 237;

*Poyser and Mills' Arbitration* [1963] 1 All E R 612 at p 616;

*Givaudan & Co. Ltd.* v. *The Minister of Housing* [1966] 3 All E.R. 696;

*PEO* v. *Board of Cinematograph Film Censors* (1965) 3 C.L.R. 27 at pp 38–39;

*Decisions of the Greek Council of State Nos.* 942/1971, 1005/33, 354/38, 1711/65, 670/58, 1415/58;

*Christodoulou* v. *Republic* (1968) 3 C.L.R. 603;

*Republic* v. *Mozoras* (1966) 3 C.L.R. 356;

*Marcoullides* v. *Republic*, 3 R.S.C.C. 30 at p. 35;

*HadjiGeorghiou* v. *Republic* (1968) 3 C.L.R. 326;

*Kalisperas* v. *Republic*, 3 R.S.C.C. 146;

*Pantelidou* v. *Republic*, 4 R.S.C.C. 100;

*Michael* v. *Republic* (1972) 3 C.L.R. 206 at p. 216;

*Philippou* v. *Republic* (1981) 3 C.L.R. 153;

*Koudounas* v. *Republic* (1981) 3 C.L.R. 46;

*HadjiPetris* v. *Republic* (1968) 3 C.L.R. 702 at p. 706;

*Psaltis* v. *Republic* (1971) 3 C.L.R. 372 at p. 373;

*Kanda* v. *Government of the Federation of Malaya* [1962] A.C. 322.

**Recourse.**

Recourse against the decision of the respondent to terminate applicant's service as a Director-General of the Ministry of Communications and Works in the public interest.

*T. Papadopoulos*, for the applicant.

*S. Georghiades*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

SAVVIDES J. read the following judgment. The present recourse is directed against the decision of the Council of Ministers dated 11.6.1981 whereby the service of the applicant as Director-General of the Ministry of Communications and Works, was terminated "in the public interest".

The applicant who was appointed in the Public Service on 24.9.1941, after having passed the Civil Service qualifying examinations and after a successful career since the day of his appointment, was promoted to the post of Director-General of the Ministry of Communications and Works which is one of the highest posts in the hierarchy of Civil Service. He had been holding this post since May, 1959 till August, 1960 (the transitional period) and continued holding same till 11.6.1981, when his service was terminated by the sub judice decision of the Council of Ministers. The fact that the applicant during his long term of service had shown excellent performance in the discharge of his duties, is manifested by his promotion in various important posts in the hierarchy of Civil Service, and, also, by the facts that—

(a) he was granted a scholarship for University studies

during the years 1949–1952 at the University of Wales where he graduated with a B.A. Degree with Hons.

(b) He was granted another post-graduate scholarship in Oxford from May, 1968 to July, 1968 in Transport Economics.

(c) During the period 1973–1976, in addition to his duties, he served as a Chairman of the Ports Authority by decision of the Council of Ministers. He also served in such capacity as from January, 1981 by decision of the Council of Ministers till the date of the termination of his service.

(d) He had also been appointed by the Council of Ministers as a member of the Planning Committee of the Town Planning Council, of the Joint Labour Committee and other Committees.

During his term of office he represented Cyprus in various International Conferences (International Organisation of Civil Aviation, International Port Union, The Committee of Experts of the United Nations for Commercial Development, International Labour Office, etc.) by decisions of the Council of Ministers. A full list of the International Committees in which he participated as representative of Cyprus and the part played by him in such Committees is set out in Annex 2 attached to his application for an interim order in this recourse. I need not expand upon them, as the facts contained therein which manifest a distinguished career, have not been disputed by the respondent whose counsel stated in his address that the sub judice decision was not taken either on lack of efficiency or integrity but in the public interest.

On 11.6.1981 the Council of Ministers decided to terminate the service of the applicant "in the public interest" and communicated such decision to him by letter dated 11.6.1981 which was handed over to him by his Minister, the Minister of Communications and Works. The contents of such letter (copy of which is annexed to the affidavit for an interim order as Annex 1) reads as follows:-

" Ἔχω ἐντολὴν παρὰ τοῦ Ὑπουργικοῦ Συμβουλίου ὅπως πληροφορήσω ὑμᾶς ὅτι τὸ Ὑπουργικὸν Συμβούλιον κατὰ

τὴν σημερινὴν του Συνεδρίαν, ἐνασκοῦν τὰς ἐξουσίας ὑφ' ὧν περιβέβληται δυνάμει τῶν ἄρθρων 6(στ) καὶ 7 τοῦ περὶ Συντάξεων Νόμου, Κεφ. 311, (ὡς ἐτροποποιήθη μεταγενεστέρως), καὶ πᾶσαν ἄλλην πρὸς τοῦτο χορηγουμένην αὐτῶ ἐξουσίαν καὶ κατόπιν ἐνδελεχοῦς ἐξετάσεως τῶν προσκομισθέντων στοιχείων ἐν σχέσει πρὸς τὴν ἀνεπίτρεπτον δημοσίᾳ συμπεριφορὰν σας, ἡ ὁποία θίγει βασικῶς αὐτὴν ταύτην τὴν κρατικὴν ὑπόστασιν καὶ τὴν κανονικὴν καὶ ἀπρόσκοπτον λειτουργίαν τοῦ κράτους καὶ τῆς Δημοσίας αὐτοῦ Ὑπηρεσίας, λαβὸν ὑπ' ὄψιν τὰς συνθήκας τῆς Ὑπηρεσίας ταύτης καὶ τὴν εἰς αὐτὴν χρησιμότητά σας καὶ ἐν γένει ἁπάσας τὰς περιστάσεις, κατέληξεν εἰς τὸ συμπέρασμα ὅτι ἡ παραμονὴ σας εἰς τὴν Δημοσίαν Ὑπηρεσίαν ὄχι μόνον οὐδεμίαν ὠφελημότητα θὰ παρεῖχεν εἰς ταύτην, ἀλλὰ καὶ θὰ ἦτο λίαν ἐπιβλαβὴς δι' αὐτὴν καὶ ἀπεφάσισεν ὅπως αἱ ὑπηρεσίαι σας τερματισθῶσιν ἀπὸ σήμερον πρὸς τὸ δημόσιον συμφέρον, μὲ πλήρη τὰ ὠφελήματα ἀφυπηρετήσεως, τῶν ὁποίων δικαιοῦσθε".

The English translation of which reads as follows:-

"I have been instructed by the Council of Ministers to inform you that the Council of Ministers at its today's meeting, in exercising the powers vested in it by sections 6(f) and 7 of the Pensions Law, Cap. 311 (as later amended) and any other power in this respect vested in it and after a thorough examination of the material produced before it in relation to your unbecoming conduct in public which offends basically the very subsistence of the State and the proper and unfettered functioning of the State and its Public Service, having taken into consideration the conditions of such service and your usefulness thereto and generally all the circumstances, came to the conclusion that your stay in the Public Service could not only serve no useful purpose to it, but also, it would be very detrimental thereto, decided that your service be terminated as from to-day in the public interest, with full retirement benefits, to which you are entitled".

As a result of the above decision, applicant filed the present recourse, whereby he seeks—"a declaration of the Court that the act and/or decision of the respondent which was commu-

nicated to him by letter dated 11.6.1981 signed by the Minister of Communications and Works, whereby the service of the applicant as Director-General of the Ministry of Communications and Works, was terminated, is null and void and/or illegal and of no legal effect".

The grounds of law on which this recourse is based, as set out in the application, are the following:-

"(1) The sub judice act and/or decision of the respondent was taken in manifest illegality and/or in excess or/and abuse of power in that:-

(a) it was of a punitive and/or disciplinary nature and the disciplinary provisions of the Public Service Law 33/67 have not been complied with.

(b) It involves a manifest violation of the Rules of Natural Justice in that no opportunity to be heard was given to the applicant

(c) The provision in the Pensions Law on which the respondent relied, has no application in the present case

(d) It is intended to serve alien objects.

(2) The sub judice decision is illegal, in that it was taken by an incompetent organ and constitutes a violation of Articles 122 and 125.1 of the Constitution and of the Public Service Commission Law (Law 33/67) and also of the Pensions Law, Cap. 311.

(3) The sub judice decision is illegal, in that it was taken in violation of Articles 192.1 and 7(b) of the Constitution and/or s 86(1) of Law 33/67 and/or of the Colonial Regulations which, under the provisions of the said Article of the Constitution and the Law apply in the case of the applicant.

(4) The sub judice decision is illegal and of no effect, in that it was taken under the provisions of sections 6(f) and 7 of Cap. 311 which are not in force or ceased to be in force or are deemed to have been amended since the Independence and thereafter and/or were superseded in the light of Articles 12, 18, 19, 33, 122, 125, 179, 182 and 192 of the Constitution of the Republic of Cyprus

(5) The sub judice decision is illegal, in that it was taken by an improperly constituted organ, that is, which was constituted in violation of Articles 46 and 59 of the Constitution, in that it included members who could not and/or had no right to participate in it.

(6) The sub judice decision violates the fundamental principles of Administrative Law and of the Rules of good and proper administration and illegally deprives the applicant of his permanent post in the Public Service.

(7) The respondents acted under a misconception of facts and/or they relied on inexisting or inaccurate or misconcepted facts and/or they took into consideration facts which they could not have taken into consideration.

(8) The sub judice decision is based on a misconcepted and/or illegal reasoning and/or is lacking of sufficient and legal reasoning".

By their opposition the respondents maintain that the sub judice decision was lawfully taken in the light of all relevant facts which, as set out in the opposition, are the following:-

"(1) The Council of Ministers at its meeting of the 11th June, 1981 decided to terminate the services of the applicant as Director-General of the Ministry of Communications and Works as from 11.6.1981 in the public interest.

(2) The Council of Ministers at its meeting of the 11th June, 1981, took into consideration undisputable facts and information emanating from reliable sources, according to which the applicant publicly and in a manner not permitted, presented the Republic *as being without head, and as lacking of good and able government.*

(3) It is understood that the applicant in this way, undermined ("eklonize") the confidence of the public and of the Public Service in the ability and effectiveness of the supreme organs of the State and thus he undermined the existence of the State.

(4) In the circumstances, it becomes obvious that the usefulness of the applicant in the Public Service, ceased to exist.

(5) The decision of the Council of Ministers for the termination of the services of the applicant which was communicated to him by the letter of the appropriate Minister on the 11.6.1981 was not taken as a disciplinary measure for the punishment of the applicant but as an administrative measure which was necessary in the public interest".

In arguing the case before the Court, counsel for the applicant contended that the Government has violated each and every rule or principle of Natural Justice acting in glaring abuse of power and in an unlawful way, assuming for itself powers and functions which are no longer entrusted to the Council of Ministers or which have to be read subject to the relevant constitutionl provisions. He stressed the fact that it was obvious from the contents of the letter communicating the decision of the respondent to the applicant, that it relied on sections 6(f) and 7 of the Pensions Law, Cap. 311 and by such letter the applicant is charged with "unbecoming conduct" (ἀνεπίτρεπτον συμπεριφοράν).

Such accusation, according to counsel for the applicant, makes it quite apparent that the termination of the services of the applicant were in respect of conduct which may either be touching upon the fringes of a criminal offence, if they were spoken under circumstances upon which a charge under section 46A of the Criminal Code could be framed, or an offence under section 73(1)(b) of the Public Service Law (Law 33/67), or a disciplinary offence under sub-clause (4) of the first part of the First Schedule to the Law (Law 33/67).

The allegations contained in the letter as to the conduct of the applicant are covered, counsel argued, under a cloud of generality and confusion, and the respondent refused to give particulars of the alleged circumstances, both by failing to answer a written request of counsel for applicant sent to the respondent and also by failing to comply with repeated requests made during the trial of this case as to what were the "ἀδιάσειστα γεγονότα καὶ πληροφορίες.... ἀπὸ ἀξιόπιστες πηγὲς", which are the alleged facts which led the respondent to the conclusion that the conduct of the applicant was injurious to the public interest. Such refusal, counsel contended, deprives the applicant of knowing what were such facts and informations, in what way they were

communicated to the respondent, whether they were truthfully conveyed, whether they referred to words amounting to bona fide criticism, whether the place they were spoken was public or not. Counsel submitted that the applicant never uttered the alleged or any other words to similar effect, and this is confirmed by the affidavit sworn by the applicant in support of his application for interim order which is before the Court. Counsel also argued that no proper reasoning is contained either in the said letter or in the decision itself, as appearing in the extract from the minutes of the Council of Ministers which was produced before the Court.

He further argued that though the Council of Ministers had no jurisdiction in the case, since disciplinary matters are within the exclusive jurisdiction of the Public Service Commission under Article 125.1 of the Constitution and the provisions of Law 33/67, assuming that there was such jurisdiction in the Council of Ministers, a decision terminating the service of the applicant for a disciplinary or quasi disciplinary offence, could not be taken by any procedure which ignored the paramount Rule of Natural Justice which is the right to know of the accusations made against him and to be heard in his own defence. Furthermore, once the alleged words of the applicant were directed against the Government of the Republic, which, in the circumstances consists of the President and his Ministers, the decision of the Council of Ministers was taken in violation of the next Rule of Natural Justice, in that it was taken by persons personally affected and under such Rule, no one shall be a judge in his own cause. In consequence, the decision of the Council of Ministers is null and void on this ground.

In dealing with legal ground (5) in that the decision was taken by an improperly constituted organ, counsel submitted that the Council of Ministers was improperly constituted, in that it included members who could not and/or had no right to participate in the taking of the decision, such members being the Minister to the President and the Deputy Minister of Interior, the first one being the head of a Ministry, the creation of which is contrary to the provisions of the Constitution, and the other holding a post which was also created contrary to the Constitution.

Counsel further contended that the Council of Ministers

in any event had no jurisdiction to dismiss the applicant under the provisions of sections 6(f) and 7 of the Pensions Law, because such provisions are merely provisions enabling the Council of Ministers to give pension in cases of civil servants whose services were terminated on any of the grounds set out therein, one of which was dismissal in the public interest, in which cases, due to the absence of any other provision, pension was not payable to the civil servant so dismissed. Counsel submitted that prior to the Independence day, the power to dismiss an officer in the public interest, was derived from the Colonial Regulations and not from Cap. 311. Such Regulations made ample provision as to the punishment of a civil servant both in cases of misconduct and cases where public interest was involved. Also the procedure to be followed was set out therein under which, in all cases, a civil servant had the right to be heard in his own cause. Such right, counsel submitted, is a vested right safeguarded to him under Article 192.1 of the Constitution.

Apart from the rights of the applicant under the Colonial Regulations which had been preserved under Article 192 of the Constitution, counsel contended that all other disciplinary power has been vested after Independence in the Public Service Commission, by virtue of Article 125.1 of the Constitution and there cannot be concurrent or similar power in any other body, because the situation will arise of two authorities with parallel or concurrent or overlapping jurisdiction, something which cannot be accepted as a possibility.

In dealing with the question as to whether the act of the Ministers was an administrative measure or a disciplinary sanction, counsel submitted that even if the Court reached the conclusion that such action amounted to an administrative measure, again it was subject to judicial scrutiny and it is upon the Court to decide as to the essence and the true nature of their action.

Counsel expounded on the meaning of public interest and when such matter can be invoked. He submitted that invocation of public interest must be justified with a specification of the serious reasons of public interest and how the conduct of the applicant affected that public interest. The invocation should refer to real facts and circumstances, supported by

evidence and not by a general averment, as in the present case. Those offended by the conduct of the applicant, counsel concluded, have appointed themselves, as investigators, prosecutors, witnesses, judges and executors of their own judgment as to what amounted to public interest.

Counsel for respondent in opening his address, produced a copy of the decision of the Council of Ministers of the 11th June, 1981, which was put in as exhibit No. 1 and said that it was the best he could do at the moment, but he did not exclude the possibility that at some later stage in the course of the hearing it might be possible to put before the Court more details in compliance with the wishes expressed by counsel for the other side, provided that the Council of Ministers was prepared to give him all data required by the other side. Though such statement was made on the 10th November, 1981, no such particulars were given on the lines requested by counsel for the applicants till the 11th December, 1981 when counsel for the respondent continued his address and the hearing was concluded.

Dealing with the question of reasoning, counsel contended that there was sufficient reasoning in the letter communicating the decision of the respondent to the applicant. On the question of violation of the Rules of Natural Justice, counsel submitted that the rule concerning the right of hearing was not violated in the present case, because the decision of the Council of Ministers was an administrative measure in the public interest, and not a sanction taken against the applicant for the commission of a disciplinary offence by the applicant and, therefore, the Council of Ministers was not bound to accord the applicant the right to be heard.

As to the violation of the rule that one cannot be a judge in his own cause, counsel contended that in the present case the Council of Ministers was the only competent organ under section 7 of the Pensions Law, to terminate the service of a public officer on the grounds of public interest and, therefore, the implication of the Law of Necessity may override the rule that one cannot be a judge in his own cause, as there was nobody else entrusted with such power. He contended that even if the alleged conduct of the applicant constituted a disciplinary offence, irrespective of whether any disciplinary proceedings

were taken or not, the Council of Ministers was entitled, in the circumstances of the present case, to terminate the service of the applicant on the ground of public interest as, by his conduct, the applicant could no longer remain in the Public Service, because he has presented the Government as being without head, without a leader and that the country as lacking of good and efficient government, showing an intention that he was not prepared to co-operate with this Government and with its Ministers in his capacity as Director of the Ministry in question. Such termination of the service of the officer in question was not made for the purpose of punishing him but because his continued presence in the Public Service would be against the public interest. In support of his argument that the act of the Council of Ministers was an administrative measure, counsel tried to draw a distinction between a disciplinary act and an administrative measure and concluded, on this point, that in the case where an administrative measure is taken, the Rules of Natural Justice do not apply.

Dealing with the Pensions Law, counsel for the applicant submitted that the Pensions Law, Cap. 311, is not an enabling law giving power to the Council of Ministers to grant pensions in cases of termination of service, but it is a law which does give power to terminate the service of a public officer and at the same time to decide if any and what gratuity or pension the public officer in question will receive. Section 7 is a composite section, in that it both gives power to terminate the service and also discretionary powers to decide what, if any, pension or gratuity the public officer concerned will receive on termination of such service. Counsel further stated that though disciplinary proceedings cannot be taken by the Council of Ministers and though the Council of Ministers does not have parallel jurisdiction with the Public Service Commission to exercise disciplinary proceedings, yet, it has the power to terminate the employment of public officers in the public interest as such power is vested in the Council of Ministers by Article 54 of the Constitution, which is indicative but not exhaustive of the executive powers of the Council of Ministers under the Constitution. Counsel contended that the powers which are vested in the Council of Ministers by virtue of section 6(f) and section 7 of Cap. 311, and by virtue of the residuary overall executive powers with which it is vested by Article 54 of the Constitution,

are different to the disciplinary powers vested in the Public Service Commission by virtue of the Constitution and the Public Service Law, 33/67. These powers of the Council of Ministers must be exercised in the public interest and not directly for reasons which are disciplinary and which have the object or are motivated by the desire to punish the public officer for misconduct, rather than to effect a change in his position in the Public Service which is dictated by more general reasons of public interest and in which any possible misconduct has no relevance, except a very secondary one.

On the question of the constitution of the Council of Ministers, counsel argued that the Council of Ministers was properly constituted and that there was no excess number of ministers than the number provided for by the Constitution which is ten Ministers, plus the Minister of Education who was appointed over a Ministry which was created under the Law of Necessity after it was found that the Communal Chamber could not properly operate, a fact which is not disputed in the present case. The fact that one Minister, that is, the Minister of Interior was also Minister of Defence, is not contrary to the provisions of the Constitution, because the Constitution does not provide for specific Ministries but only fixes the number of Ministers. As to the Deputy Minister of Interior, his position was that of an under-secretary, who, though attending the meetings of the Council of Ministers, is not participating in the taking of the decisions.

Counsel contended that there is no provision in the Constitution about the quorum of the Council of Ministers, but only that the decision should be a majority decision. In the present case, the decision was taken by six Ministers who were present, unanimously, and, therefore, there was majority decision. And counsel concluded his argument by submitting that the decision of the Council of Ministers was properly taken within the powers vested in it under the provisions of section 6(f) and section 7 of the Pensions Law.

It is clear from the contents of the letter sent to the applicant embodying the decision of the Council of Ministers for his dismissal from the Public Service, and from the whole tenor of the arguments before me, that in taking such decision the

Council of Ministers relied on section 6(f) and section 7 of the Pensions Law, Cap. 311, as amended by Laws 9/67 to 39/81.

The Pensions Law, Cap. 311 is according to its title, "A Law to provide for the payment of pensions, gratuities and other allowances" to public officers. It embodied the provisions of the previous Pensions Law, Cap. 288 of Vol. II of the Legislation of Cyprus, 1949, as amended by Laws 4/52 to 28/58.

Regarding the circumstances in which pension may be granted, section 6 reads as follows:-

> "No pension, gratuity or other allowance shall be granted under this Law to any officer except on his retirement from the public service in one of the following cases....."

And it then proceeds to enumerate the various cases which include, inter alia, the attaining of the age of 60, on transfer to other public service, on the abolition of office, on compulsory retirement for the purpose of facilitating improvement in the organisation of the Department, on medical grounds, etc. to which, for the purposes of the present case, I need not refer in detail, save in respect of case under paragraph (f) of s. 6 which is material to the present case and which reads as follows:

> "(f) in the case of termination of employment in the public interest as provided in this Law".

Though section 6 has undergone a number of amendments, the provision contained in paragraph (f) is still the same as in the original text of Cap. 311.

As to matters relating to termination of employment in the public interest, the respective provisions are contained in section 7, which, used to read as follows:

> "Where an officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Governor in Council may, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for

which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 of this Law".

Paragraph (e) of section 6 to which reference is made by section 7, is the case of retirement on medical grounds. The following amendments were brought about to section 7 by section 3 of Law 38/79:-

(a) The words "by the Council of Ministers" were interposed after the words "is terminated" in the first line of section 7.

(b) The words "the Governor in Council" referred to therein were substituted by the words "The Council of Ministers".

Till the year 1955 there was no provision in the old Pensions Law, Cap. 288, about the granting of pension in the case of termination of employment in the public interest. Paragraph (f) of section 6 used to read as follows:-

"in the case of removal on the ground of inefficiency as provided in this Law".

And section 7 of Cap. 288 used to read:-

"Where an officer is removed from his office on the ground of his inability to discharge efficiently the duties thereof, and a pension gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Governor-in-Council, may, if he considers it justifiable having regard to all the circumstances of the case, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of the preceding section".

In 1955 and as a result of the provisions of section 3 of Law 1 of 1955, paragraph (f) of section 6 and also section 7, of Cap. 288 were amended by the introduction of the words "in the public interest" and the so amended sections appear as stated in section 6(f) and section 7 of Cap. 311, subject to the amendments brought about to section 7 by section 3 of Law

38 of 1979 which was enacted after the Independence of Cyprus. Law 1 of 1955 was enacted at a time when the Colonial Regulations were part of the Colonial Legislation which extended to all Colonies set out therein, including Cyprus which was then a Colony.

Under Regulation 59 of the Colonial Regulations, power was vested to the Governor, to terminate the service of an officer in the public interest, and the procedure to be followed in such case is set out therein. Regulation 59 provided as follows:-

> "Notwithstanding the above provisions, if the Governor considers that it is desirable in the public interest that any officer should be required to retire from the Service on grounds which cannot suitably be dealt with by the procedure laid down in Regulation 58, he shall call for a full report from the heads of the departments in which the officer has served; and if, after considering that report and giving the officer an opportunity of submitting a reply to the complaints by reason of which his retirement is contemplated, he is satisfied, *having regard to the conditions of the Service, the usefulness of the officer thereto and all the other circumstances of the case that it is desirable in the public interest to do so*, he may require the officer to retire and the officer's service shall accordingly terminate on such date as the Governor shall specify. In every such case the question of pension will be dealt with under the laws or regulations of the Colony".
>
> (The underlining is mine).

Regulation 59 did not contain any provision as to the question of any pension being payable to an officer whose services were terminated in the public interest, but expressly reserved that matter to be dealt with under the laws or regulations of each Colony. As I have already mentioned, till the enactment of Law 1 of 1955 whereby the old Pensions Law (old Cap. 288) was amended, there was no provision in the Pensions Law for the granting of any pension to a civil servant whose services were terminated under the powers vested in the Governor by Regulation 59. Comparing the wording of section 7 of the Pensions Law (Cap. 311) with that of Regulation 59, one will notice that it is the same in the material respect underlined

in the text of Regulation 59 set out hereinabove as that embodied in Cap. 311. It is also evident that whereas under Regulation 59 there is express power to "require the officer to retire and the officer's service shall accordingly terminate on such date as the Governor shall specify", under the provisions of section 7 the power contemplated therein is to grant pension gratuity or other allowance "where an officer's service is terminated .. and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law .. .. ". Considering the objects of the Pensions Law as set out in its title, the express power for termination of service of a civil servant in Regulation 59 and the phraseology of section 7 as to the power to grant pension which, in this respect is the same as that of Regulation 59, and comparing the provisions of Regulation 59 to those of section 6(f) and section 7, one can reach the conclusion that the power to terminate the service of a public officer emanated not from sections 6(f) and 7 of the Pensions Law, but from Colonial Regulation 59 and that section 6(f) and section 7 were ancillary provisions enacted to give effect to Regulation 59 under the provision contained in the last sentence of such Regulation. In dealing with the position as it existed prior to Independence, I find myself unable to accept the argument advanced by counsel for the respondent that the power for dismissal emanated from section 7 of the Pensions Law and not from the Colonial Regulations.

Regarding the tenure of office and the dismissal of a civil servant, one has to examine the situation as it was prior to Independence and how it developed after the Independence of Cyprus under the provisions of the Constitution of Cyprus which came into force on the 16th August 1960 as well as under any laws enacted under such provisions since Independence. Prior to Independence the holding of office by civil servants was regulated by the Colonial Regulations. Under regulation 56 it was provided that:-

> "An officer holds office subject to the pleasure of the Crown, and the pleasure of the Crown that he should no longer hold it may be signified through the Secretary of State, in which case no special formalities are required".

Though in the said Regulation the tenure of office is described as being subject to the pleasure of the Crown, once a civil servant

had qualified by examination and probation and was taken on establishment, he was secure in his employment till retiring age, save in cases of misconduct or inefficiency. This has been well-established by the House of Lords in *McClelland* v. *N. Ireland Health Board* [1957] 2 All E.R. 129, in which Lord Goddard, summarised the position of civil servants as to tenure of office as follows, at page 134:-

> "Although a civil servant, as is well known, is employed at the pleasure of the Crown and can be dismissed at any moment, in fact once he has qualified by examination or probation and is taken on the establishment he is secure in his employment till he reaches the retiring age, apart of course from misconduct or complete inefficiency".

To the same effect is the decision of our Supreme Constitutional Court in *Markides* v. *The Republic* (1961) 2 R.S.C.C. 8 in which the Court dealing with the question of pensions and gratuities, had this to say at p. 12:-

> "Notwithstanding the fact that under the constitutional and legal principles prevailing in Crown Colonies, such as the former Colony of Cyprus was, matters of pension and gratuity are, by legal fiction, regarded as discretionary acts of grace, they were nevertheless vested 'rights' of the individual concerned, inasmuch as they could be vindicated through the appropriate administrative procedure". (see also, *Georghios Hadjisavva* v. *Republic* (1972) 3 C.L.R. 174, in which the same principle was adopted).

Under regulation 57, there was provision how a public officer represented to the Governor as guilty of misconduct not of a serious nature was to be treated. The material part of such regulation, reads as follows:-

> "If it is represented to the Governor that an officer has been guilty of misconduct, and the Governor is of opinion that the misconduct alleged is not serious enough to warrant proceedings under Regulations 58 and 60, with a view to dismissal, he may cause an investigation to be made into the matter in such manner as he shall think proper, and the officer *shall be entitled to know the whole case made against him and shall have an adequate opportunity throughout of making his defence.*

If as a result the Governor is of opinion that the allegation is proved, he may inflict such punishment upon the officer by way of fine or reduction in rank, or otherwise, as may seem to him just.

In the case of an officer holding an office appointment to which is subject to the approval of the Secretary of State, or an officer who, though not holding such an office, was selected for appointment by the Secretary of State, the punishment proposed shall be immediately reported to the Secretary of State and the report shall be accompanied by a statement of the offence, the evidence in support, and such observations as the officer has made or desires to make. The Secretary of State may approve, vary or remit the punishment.

This Regulation is without prejudice to any local law or regulation providing for the punishment of officers by the Governor or the head of a department". (The underlining is mine).

Where the conduct of an "officer" was such as to make him liable for dismissal by the Governor, this could only be done subject to the provisions and the procedure contemplated by regulations 58, 59 and 60.

Regulation 58 was applicable to officers who neither held an office appointment to which was subject to the approval of the Secretary of State, nor was selected for appointment by the Secretary of State and the power of his dismissal by the Governor was subject to the procedure set out therein and which was as follows:-

"Reg. 58 .....

(i) The officer shall be notified in writing of the grounds upon which it is intended to dismiss him; and he shall be given a full opportunity of exculpating himself.

(ii) The matter shall be investigated by the Governor with the aid of the Head of the officer's Department, or such other officer or officers as the Governor may appoint; provided that in the case of an officer whose pensionable emoluments exceed £600 per annum,

the procedure laid down in Colonial Regulations 60(i) to (vii) shall be followed.

(iii) If any witnesses are called to give evidence the officer shall be entitled to be present and to put questions to the witnesses.

(iv) No documentary evidence shall be used against the officer unless he has previously been supplied with a copy thereof or given access thereto.

(v) In lieu of dismissal the Governor may at his discretion impose some lesser panalty such as reduction in rank, stoppage of increment, fine or reprimand. Alternatively, if the proceedings disclose grounds for so doing, he may without further proceedings require the officer to retire in accordance with Regulation 59.

(vi) If the officer is convicted on a criminal charge, the Governor may, upon a consideration of the proceedings of the Court, dismiss the officer or subject him to some lesser penalty".

In the case of an officer holding an office appointment to which was subject to the approval of the Secretary of State, or who, though not holding such an office, was selected for appointment by the Secretary of State, the right of the Governor for his dismissal was subject to a more strict procedure safeguarding the rights of the officer, which provided that:

"Reg. 60 ----------

(i) The officer shall by direction of the Governor be notified in writing of the grounds on which it is proposed to dismiss him and he shall be called upon to state in writing before a day to be specified (which day must allow a reasonable interval for the purpose) any grounds upon which he relies to exculpate himself.

(ii) If the officer does not furnish such statement within the time fixed by the Governor, or if he fails to exculpate himself to the satisfaction of the Governor, the Governor shall appoint a Committee to inquire into the matter. The Committee shall consist of not less than three persons. The chairman shall be a Judge,

Magistrate, or Legal Officer. The members of the Committee shall be selected with due regard to the standing of the officer concerned, and to the nature and quality of the complaints which are subject of the inquiry. The head of the officer's department shall not be a member of the Committee.

(iii) The officer shall be informed that on a specified day the question of his dismissal will be brought before the Committee and that he will be allowed and, if the Committee shall so determine, required to appear before the Committee and defend himself.

(iv) If witnesses are examined by the Committee, the officer shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf, and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.

(v) The Committee may in its discretion permit the Government or the officer, to be represented by an officer in the public service or, in exceptional cases, by solicitor or counsel, and may at any time, subject to such adjournment as in the circumstances may be required, withdraw such permission; provided that where the Committee permit the Government to be represented they shall not refuse the officer permission to be similarly represented.

(vi) If during the course of the inquiry further grounds of dismissal are disclosed, and the Governor thinks fit to proceed against the officer upon such grounds, the officer shall by the Governor's direction be furnished with a written statement thereof and the same steps shall be taken as are above prescribed in respect of the original grounds".

Paragraphs (vii) and (viii) set out the procedure to be followed after the report of the Committee was submitted to the Governor and considered by him in Executive Council, and the functions of the Secretary of State after such report was submitted to him.

In addition to the above Regulations, dealing with misconduct

of an officer, regulation 59 to which reference has already been made, provided how an officer could be dismissed in the public interest.

Examining regulations 57, 58, 59 and 60, one will notice that the power vested in the Governor for imposing any punishment either by way of fine, reduction in rank, or dismissal, presupposed a right, given to the officer, to know the case against him and to have adequate opportunity throughout to make his defence, and under no circumstances the Governor was empowered to punish or dismiss him without affording him such opportunity in the manner provided for by each respective regulation.

Having dealt with the position of civil servants prior to Independence, I am now coming to consider the position as from the Independence Day under the provisions of the Constitution of Cyprus.

Under Article 192 of the Constitution, the terms and conditions of service of a public officer, as already applicable to him prior to the Independence Day, were preserved. Paragraph (1) of Article 192 provides as follows:-

> "Save where other provision is made in this Constitution any person who, immediately before the date of the coming into operation of this Constitution, holds an office in the public service shall, after that date, be entitled to the same terms and conditions of service as were applicable to him before that date and those terms and conditions shall not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date".

And paragraph (7) of Article 192 provides:-

> "7. For the purposes of this Article-
>
> (a) ----------
>
> (b) 'terms and conditions of service' means subject to the necessary adaptations under the provisions of this Constitution, remuneration, leave, removal from service, retirement pensions, gratuities or other like benefits".

Matters touching the appointment, promotion, transfer, retirement and exercise of disciplinary control over public officers

was assigned under Article 125 of the Constitution to the Public Service Commission established under Article 124. As to the duties and powers of the Public Service Commission, paragraph (1) of Article 125 provides as follows:-

> "Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers".

The comptence of the Public Service Commission under paragraph (1) of Article 125 has been judicially considered in a number of cases by this Court, but at this stage, I consider it sufficient to refer only to a few of them.

In *Ahmed Nedjati and The Republic of Cyprus* (1961) 2 R.S.C.C. 78 at p. 82, the Supreme Constitutional Court said:-

> "The Court is of the opinion that paragraph 1 of Article 125 constituted the Public Service Commission as the only competent organ to decide on all matters stated therein concerning the individual holders of public offices.
>
> It will be seen, therefore, that the objects of paragraph 1 of Article 125 include, not only the safeguarding of the efficiency and proper functioning of the public service of the Republic, but also the protection of the legitimate interests of the individual holders of public offices.
>
> This being so the interpretation of any particular provision of the said paragraph 1 of Article 125 should be made in the light of the above objects due regard being had, at the same time, to the requirements of practicability and physical possibility".

The above passage was cited and adopted by Triantafyllides, P. in the case of *Yiallourou* v. *The Republic* (1976) 3 C.L.R. 214 at p. 219.

In *Nicolaou* v. *The Republic* (1969) 3 C.L.R. 42 at p. 56 it reads:-

> "In any case, I would require much more express and clear legislative language before I could hold that section 5(4) deprives all the members of the Foreign Service—and not only some of them, for the sake of the exigencies of the service—of the independence ensured to them having their transfers decided upon by a Public Service Commission, be it the one under Article 124 of the Constitution or the one under Law 33/67; because, without putting in doubt at all the good faith of any Minister or Head of Department, it is plainly obvious that a public officer feels more independent if his fate in the service depends not on his superiors but on a separate autononous organ".

In 1967 an organic Law, The Public Service Law (Law 33/67) was enacted making provision for "the functioning of the Public Service Commission, for the appointment, promotion and retirement of public officers and their terms of service, disciplinary proceedings and other matters relating to the public service".

Under section 5 the functions of the Public Service Commission are set out as follows:-

> "Πλὴν τῶν περιπτώσεων περὶ τῶν ὁποίων γίνεται εἰδικὴ πρόνοια ἐν τῷ παρόντι ἢ ἐν οἱῳδήποτε ἑτέρῳ νόμῳ ὡς πρὸς οἱονδήποτε θέμα ἐκτιθέμενον ἐν τῷ παρόντι ἄρθρῳ καὶ τηρουμένων τῶν διατάξεων τοῦ παρόντος ἢ οἱουδήποτε ἑτέρου ἐκάστοτε ἐν ἰσχύϊ νόμου, ἀποτελεῖ καθῆκον τῆς Ἐπιτροπῆς ὁ διορισμός, ἡ ἐπικύρωσις διορισμοῦ, ἡ ἔνταξις εἰς τὸ μόνιμον προσωπικόν, ἡ προαγωγή, ἡ μετάθεσις, ἡ ἀπόσπασις καὶ ἡ ἀφυπηρέτησις δημοσίων ὑπαλλήλων καὶ ἡ ἐπ' αὐτῶν ἄσκησις πειθαρχικοῦ ἐλέγχου περιλαμβανομένων τῆς ἀπολύσεως ἢ τῆς ἀπαλλαγῆς ἀπὸ τῶν καθηκόντων αὐτῶν".

> ("5. Save where other express provision is made in this or any other law with respect to any matter set out in this section and subject to the provisions of this or any other law in force for the time being, it shall be the duty of the Commission to appoint, confirm, emplace on the permanent establishment, promote, transfer, second, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers").

Part V of the Law, deals with the appointments, promotions, transfers, resignations and retirements of public officers. Part VI with the duties and responsibilities of public officers. Part VII embodies the Disciplinary Code which sets out the disciplinary offences and the punishments which can be imposed upon a civil servant of such offences as well as the procedure to be followed.

Section 80 provides that when a public servant is reported to the appropriate authority (as defined in section 2), for having committed a disciplinary offence, then, if the offence is one set out in Part I of Schedule I of the Law, the appropriate authority may deal summarily with the case by causing an investigation to be made inter-departmentally, as provided by section 81 and after such investigation, if a disciplinary offence is disclosed, the appropriate authority may proceed to consider the case in the manner provided therein by affording the officer the opportunity to be heard. If the officer is found guilty, the appropriate authority may impose upon him any one of the sentences which are set out in Part II of Schedule 1. In cases where the appropriate authority comes to the conclusion that due to the seriousness of the offence or the circumstances under which it was committed a more serious sentence has to be imposed, then the case is referred to the Public Service Commission, and the procedure to be followed is set out under section 82. The Public Service Commission may impose on such officer any one of the sentences set out in section 89(1) ranging from caution and warning to the more severe ones, such as compulsory retirement or dismissal. A material provision which appears both in section 81 and section 82, is the right of the officer to be informed of the accusations against him and defend himself.

Under section 82, provision is made that the public officer should be informed of the charge against him, attend the hearing of the case to defend himself, summon witnesses for his defence and be represented by counsel of his choice. The trial before the Commission under the Regulations set out in the Annex to the said Law, is carried out in so far as this is possible in the same manner as a criminal case tried summarily.

Article 54 of the Constitution sets out the executive powers to be exercised by the Council of Ministers which extend to

powers in all matters, other than those expressly reserved to the President and the Vice-President of the Republic and those within the competence of a Communal Chamber as provided by the Constitution. Such powers include, amongst others:-

"(a) the general direction and control of the Government of the Republic and the direction of general policy;

(b) .....

(c) .....

(d) The co-ordination and supervision of all public services;

.....".

The competence of the Council of Ministers under Article 54 has been examined by this Court in a number of cases. In particular, paragraphs (a) and (d) were considered in *Papapetrou and The Republic of Cyprus*, 2 R.S.C.C. p. 61 at p. 66 where the Court, expressed its opinion as follows:-

"In the opinion of the Court the Public Service Commission, which is established under Article 124, is vested under the Constitution with only those powers which it has expressly been given under Article 125.

The residue of any executive power in respect of any matters concerning the public service of a State, which by its constitution has not been expressly given to an independent body such as a Public Service Commission, remains vested in the organ of the State which exercises executive power and within whose province the public service of the State normally otherwise comes and in the case of the Republic of Cyprus such organ, under Article 54 of the Constitution, and particularly paragraphs (a) and (d) thereof, is the Council of Ministers.

It is clear from the wording of paragraph 1 of Article 125 that the Public Service Commission, in addition to being entrusted with the task of the allocation of public offices between the two Communities in accordance with Article 123, is only entrusted with powers, such as appointment, confirmation, etc., relating to public officers, as holders of public offices, but not to the public offices in question themselves.

As the executive power relating to the creation of new posts in the public service of the Republic and to the making and amending of schemes of service concerning existing or new posts, is a power relating to public offices and not to the public officers, as holders of such offices, it is not, thus, included among the powers which are entrusted to the Public Service Commission by Article 125 and such power remains vested in the Council of Ministers.

This view regarding the effect of paragraph 1 of Article 125 is clearly consonant with the powers of the Council of Ministers under Article 54 of the Constitution, particularly paragraphs (a) and (d) thereof". (Vide also, *Georghiades* v. *The Republic* (1966) 3 C.L.R. 252 at p. 276 where the said opinion was adopted).

In *Papaleontiou* v. *The Republic* (1967) 3 C.L.R. 624 which was a case of a Court Stenographer who had decided on his own to resign and he communicated such intention to the Government with a request that the termination of his services should be treated as having taken place in the public interest it was found that the case was not within the competence of the Public Service Commission and that the appropriate organ to deal with the matter involved was the Council of Ministers. Triantafyllides J. (as he then was) at p. 631, concluded as follows on this point:

"Without going fully into the extent of the competence of the Commission—under Article 125.1—in matters of retirement or termination of services of public officers, I am satisfied that in the present instance it was the Council of Ministers which was the competent organ to deal with the matter involved in this recourse:

What happened was, in essence, that the Applicant had decided, on his own, to resign and he did communicate this to Government by his letter of the 1st January, 1966; he coupled the communication of his decision to resign with a request that the termination of his services should be treated as having taken place in the public interest, but he did not make his resignation conditional upon his request being granted.

Whether or not the request of the Applicant would be

granted was a question entailing considerations of public interest and Government policy, as well as financial consequences; these matters were beyond the limited and specifically laid down competence of the Public Service Commission under Article 125.1, and within the residual competence of the Council of Ministers under Article 54 of the Constitution".

The construction of Article 54 as to the residual competence of the Council of Ministers under such Article as expounded in the above cases and to which I agree, was also adopted in *Hadjisavva* v. *The Republic* (1972) 3 C.L.R. 174 where Hadjianastassiou, J. at p. 192 said:-

"There is no doubt that the Public Service Commission is vested under the Constitution with only those powers which it has expressly been given under Article 125; and the residue of any executive power in respect of any matters concerning the public service of a State, which by its constitution has not been expressly given to an independent body such as the Public Service Commission, remains vested in the organ of the State which exercises executive power within whose province the Public Service of the State normally otherwise comes, and in the case of the Republic of Cyprus, such organ, under Article 54 of the Constitution, and particularly paragraphs (a) and (d), is the Council of Ministers".

In dealing as to the power to terminate the service of a public officer in the public interest prior to Independence I have concluded that such power did not emanate from section 6(f) and 7 of the Pensions Law, Cap. 311 but from the Colonial Regulations and that sections 6(f) and 7 were only ancillary provisions enabling the Council of Ministers to grant pension or gratuity in such cases. After Independence, one has to examine within whose competence matters of retirement of a public officer "in the public interest" are and wherefrom such competence is derived. In *Papaleontiou* v. *The Republic* (supra) in the special circumstances of that case, it was held that as the question entailed considerations of public interest and Government policy, it was not within the specifically laid down competence of the Public Service Commission under Article 125.1 but within

the residual competence of the Council of Ministers under Article 54 of the Constitution.

In *Lyssiotou* v. *Papasavva and another* (1968) 3 C.L.R. 173 at pp. 184–185, Josephides, J., had this to say:–

> "It should, perhaps, be clarified that we are not here concerned with the compulsory retirement of a public officer following disciplinary proceedings, which would no doubt be within the competence of the Commission; nor are we concerned with the retirement of a public officer 'in the public interest', under the provisions of section 7 of the Pensions Law, Cap. 311, which would appear to fall within the exclusive competence of the Council of Ministers (cf. the cases of the termination of the services of three Court Stenographers referred to in the case of *Papaleontiou and The Republic*, (1967) 3 C.L.R. 624)".

Though I am inclined to agree with the above opinion in that matters concerning the retirement of a public officer "in the public interest" other than the compulsory retirement of a public officer following disciplinary proceedings on matters which under Article 125.1 fall within the exclusive competence of the Public Service Commission would appear to fall within the exclusive competence of the Council of Ministers, I disagree that such competence is derived from section 7 of the Pensions Law, Cap. 311 but from the residue of any executive powers vested in the Council of Ministers under Article 54 of the Constitution in respect of any matters concerning the public service which have not been expressly given to the Public Service Commission under Article 125.

Having embarked at some length with the position of public officers both prior to and after the Independence, I am now coming to consider the legal grounds on which this recourse is based and which have been argued before me.

The minutes of the meeting of the Council of Ministers at which the decision was taken have been produced as exhibit 1 and they read as follows:–

> "Τὸ Ὑπουργικὸν Συμβούλιον, ἐνασκοῦν τὰς ἐξουσίας τὰ χορηγουμένας αὐτῷ δυνάμει τῶν ἄρθρων 6(στ) καὶ 7 τοῦ περὶ Συντάξεων Νόμου, Κεφ. 311 (ὡς ἐτροποποιήθη μετα-

γενεστέρως), καὶ πᾶσαν ἄλλην πρὸς τοῦτο χορηγουμένην αὐτῷ ἐξουσίαν καὶ, κατόπιν ἐνδελεχοῦς ἐξετάσεως τῶν προσκομισθέντων στοιχείων ἐν σχέσει πρὸς τὴν ἀνεπίτρεπτον δημοσίᾳ συμπεριφορὰν τοῦ κ. Πάνου Ἀδαμίδη, Γενικοῦ Διευθυντοῦ τοῦ Ὑπουργείου Παιδείας καὶ τοῦ κ. Παναγιώτη Καζαμία, Γενικοῦ Διευθυντοῦ τοῦ Ὑπουργείου Συγκοινωνιῶν καὶ Ἔργων, ἡ ὁποία θίγει βασικῶς αὐτὴν ταύτην τὴν κρατικὴν ὑπόστασιν καὶ τὴν κανονικὴν καὶ ἀπρόσκοπτον λειτουργίαν τοῦ κράτους καὶ τῆς Δημοσίας αὐτοῦ Ὑπηρεσίας, λαβὸν ὑπ' ὄψιν τὰς συνθήκας τῆς Ὑπηρεσίας ταύτης καὶ τὴν εἰς αὐτὴν χρησιμότητα τῶν προαναφερθέντων δημοσίων ὑπαλλήλων καὶ ἐν γένει ἁπάσας τὰς περιστάσεις κατέληξεν εἰς τὸ συμπέρασμα ὅτι ἡ παραμονὴ αὐτῶν εἰς τὴν Δημοσίαν Ὑπηρεσίαν ὄχι μόνον οὐδεμίαν ὠφελημότητα θὰ παρεῖχεν εἰς ταύτην, ἀλλὰ καὶ θὰ ἦτο λίαν ἐπιβλαβὴς δι' αὐτὴν καὶ ἀπεφάσισεν ὅπως αἱ ὑπηρεσίαι αὐτῶν τερματισθῶσι πρὸς τὸ δημόσιον συμφέρον ἀπὸ σήμερον, μὲ πλήρη τὰ ὠφελήματα ἀφυπηρετήσεως, τῶν ὁποίων οὗτοι δικαιοῦνται".

The English translation of which reads as follows:-

"The Council of Ministers in exercising the powers vested in it by sections 6(f) and 7 of the Pensions Law, Cap. 311 (as later amended), and any other power in this respect vested in it and, after a thorough examination of the material produced in relation to the unbecoming conduct in public of Mr. Panos Adamides, Director-General of the Ministry of Education and Mr. Panayiotis Kazamias, Director-General of the Ministry of Communications and Works, which offends basically the very subsistence of the State and the proper and unfettered functioning of the State and its Public Service, having taken into consideration the conditions of such Service and the usefulness of the aforesaid public officers thereto and generally all the circumstances, came to the conclusion that their stay in the Public Service could not only serve no useful purpose to it, but it would also be very detrimental thereto and decided that their services should be terminated as from today in the public interest, with full retirement benefits, to which they are entitled".

As I have already mentioned counsel for applicant, both prior to the hearing by letter, as well as in the course of the hearing,

asked to be informed of the source and nature of "the material before the Council of Ministers" which led it to the conclusion that the conduct of the applicant was unbecoming conduct in public undermining the State and its Public Service, but there was no response to such request. It was counsel's contention both in the grounds of law set out in the recourse and in his address to the Court that there was lack of due reasoning of the decision which violated one of the basic principles of administrative law in that respect.

It is a well established principle of Administrative Law that administrative decisions have to be duly reasoned. Due reasoning is essential to enable the Courts to carry out properly their function of judicial control of administrative actions. (See *Rallis and the Greek Communal Chamber*, 5 R.S.C.C. 11, *Jakovides* v. *The Republic* (1966) 3 C.L R. 212 at p. 221, *Zavros* v. *The Council for Registration of Architects and Civil Engineers* (1969) 3 C.L.R 310 at p 315, *Kasapis* v. *Council for Registration of Architects and Civil Engineers* (1967) 3 C L R p 270 at pp. 275, 276, *Constantinides* v. *The Republic* (1967) 3 C L R. 7 at p 14, *Metaphoriki Etaira* v. *Republic* (1981) 3 C L R 221 at p 237).

In *Hadjisavva* v *The Republic* (1972) 3 C L R 174, Hadjianastassiou, J had this to say at p. 203

> "It is one of the concepts of administrative law that administrative decisions must be duly reasoned. Due reasoning is required in order to make possible the ascertainment of the proper application of the law and to enable the due carrying out of judicial control".

And then he goes on to refer to the judgment of Megaw, J. in Re *Poysei and Mills' Arbitration* [1963] 1 All E.R. 612 at p 616 on the same topic, and he concluded as follows at p. 205.

> "It is to be observed that the giving of reasons in England comes within the concept of error of law which includes the giving of reasons that are bad in law, or (if there is a duty to give reasons) inconsistent, unintelligible or otherwise substantially inadequate

What amounts to due reasoning in a question of degree

depending upon the nature of the decision concerned, but the reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto".

Re *Poyser and Mills' Arbitration* is also referred to in the case of *Givaudan & Co. Ltd.* v. *The Minister of Housing etc.* [1966] 3 All E.R. 696. The Court in the latter case was dealing with an application to quash the Minister's decision dismissing an appeal against the refusal of a planning authority for the grant of planning permission. The facts of the case were shortly as follows:-

"An application for planning permission was refused by the local planning authority on three grounds. The applicants appealed to the Minister of Housing and local Government, who appointed an inspector to hold a local inquiry. The inspector set out his conclusions in paras. 61–68 of his report in which, after stating that the effect of a Bill (later enacted) might require consideration, he dealt with the three grounds and found in favour of the applicants on two of the grounds and against them on the third. He recommended, on the basis of the adverse conclusion, that the appeal should be dismissed. The Minister, in para. 3 of his letter notifying his decision on the appeal and his reasons therefor, set out what appeared to be intended as a summary of paras 61–68 of the report, omitting, however, a passage crucial to the inspector's conclusion on one of the grounds of objection on which he had found in favour of the applicants. Paragraph 4 of the Minister's letter stated merely that he agreed with the inspector's conclusions, without identifying which of those conclusions and accepted his recommendation. A copy of the Inspector's report was enclosed with the letter. The Minister dismissed the appeal".

Megaw, J. had this to say at page 698:-

"I have come to the conclusion that the Minister's letter of Aug. 6, 1965, is so obscure, and would leave in the mind of an informed reader such real and substantial doubt as to the reasons for his decision and as to the matters which he did and did not take into account, that it does

not comply with the requirements of r. 11(1); and that, therefore, on that ground the Minister's order must be quashed".

And at page 699:-

"There can be no objection to the inclusion, by reference, in the Minister's statement of reasons, of the inspector's conclusions, provided that those conclusions are, in themselves, sufficiently clearly and unambiguously expressed".

In *Zavros* v. *The Council of Registration of Architects and Civil Engineers* (supra) Stavrinides, J. had this to say at p. 315:-

"It is evident that the whole object of the rule requiring reasons to be given for administrative decisions is to enable in the first instance the persons concerned, and the Court on review, to ascertain in each case whether the decision is well founded in fact and in Law (cp. Porismata Nomologhias. p. 183, first paragraph); and from this three propositions follow: (1) the reasons must be stated clearly and unambiguously; (2) they must be read in the sense in which reasonable persons affected thereby would understand them; (3) a decision cannot be supported by reasons stated in terms not fulfilling the object of the rule".

In *Pancyprian Federation of Labour (PEO) and The Board of Cinematograph Film Censors etc.* (1965) 3 C.L.R. p. 27, Triantafyllides, J. (as he then was) had this to say—at pp. 38-39:-

"The absence of the proper reasoning that is required, either by legislative provisions or by general principles of administrative law, renders the administrative action concerned defective and, therefore, subject to annulment (see Conclusions from the Jurisprudence of the Council of State in Greece 1929-1959 p. 267). Such defect exists in the present case in relation to the sub judice decision of the Censorship Committee and I have reached the view that in the circumstances of this case it is a material defence which is sufficient to cause the annulment of such decision".

In the sub judice decision there is further reference to the decision having been taken in the public interest. Counsel

for the respondent in addressing the Court said that he was not suggesting that the character of the applicant was such that his presence in the service would be detrimental to the service, but because the applicant expressed himself in such terms against the Government that (to use counsel's own words) "in the public interest the person in question should no longer be in the public service because he has presented the Republic as being 'without a Head' without a leader and the country lacking of good and efficient government, and if he has made it clear that he is not prepared to co-operate with this Government and with these Ministers in his capacity as Head of the Ministry in question, then it might be open to the Council of Ministers to come to the conclusion that the public interest requires the termination of the service of the officer in question". No such facts, however, appear anywhere in the minutes or the letter communicating the decision of the Council of Ministers to the applicant which led it to invoke public interest other than a general averment of public interest.

A general averment of public interest does not amount to a sufficient reasoning but the invocation of public interest must be justified with a specification (ἐξειδίκευσις) of the serious reasons of public interest which are involved. See, in this respect, "Modern Trends of the Principle of Legality" in Administrative Law" 1973 Ed., by Tahos, where at p. 146 it reads:-

> " 'Η ἔννοια τοῦ δημοσίου συμφέροντος εἶναι εὐρυτάτη. Τοῦ κοινοῦ (δημοσίου) συμφέροντος διαφέρει τὸ συμφέρον τοῦ Δημοσίου (Fiscus). 'Η ἀφηρημένη δὲ ἐπίκλησίς του θὰ κατέληγεν εἰς αὐθαιρεσίαν τῆς Διοικήσεως. "Οθεν, πρέπει νὰ ἐξειδικεύεται ἐν ἑκάστῃ συγκεκριμένῃ περιπτώσει. Διότι τότε θὰ εἶναι δυνατὸς ὁ δικαστικὸς ἔλεγχος τῆς ὀρθῆς ἢ μὴ ὑπαγωγῆς τῶν πραγματικῶν γεγονότων εἰς τὴν περὶ ἧς ὁ λόγος ἔννοιαν".
>
> ("The notion of public interest is very wide. That of common (public) interest differs from that of the public (Fiscus). Its abstract invocation would result in abuse by the Administration. Therefore it must be specified in every particular case. Because then judicial control of the correct or not subjection of the actual facts to the said notion would be possible".)

And under foot-note (19) at p. 119:-

"19. 'Η ἔννοια τοῦ δημοσίου (κοινοῦ) συμφέροντος πρέπει νὰ διακρίνεται τόσον τοῦ συμφέροντος τοῦ Δημοσίου (Fiscus), ὅσον καὶ τοῦ συμφέροντος τῆς δημοσίας ὑπηρεσίας (ΣΕ. 309/1955, 801/1958, 2178/1970). 'Η ἐν λόγῳ ἔννοια δὲν εἶναι τόσον ἀόριστος ὥστε νὰ μὴν ὑπόκειται εἰς δικαστικὸν ἔλεγχον. 'Αντιθέτως, συνιστᾶ νομικὴν ἔννοιαν, δι' ὃ καὶ δὲν διαφεύγει τὸν ἔλεγχον τοῦ ΣτΕ. Παράδειγμα: 'Η κατὰ τὸ ἄρθρον 3 Ν. 2363/1953 ἄρνησις χορηγήσεως διαβατηρίου δέον νὰ αἰτιολογῆται πλήρως διὰ τῆς ἐξειδικεύσεως τοῦ σοβαροῦ λόγου δημοσίας τάξεως ἢ συμφέροντος ἕνεκα τοῦ ὁποίου ἡ διοίκησις προῆλθεν εἰς τοιαύτην ἄρνησιν (ΣΕ. 154/1954, 1122/1964, 2306/1968, 942/1971 κ.ἄ.).

("The concept of public (common) interest must be distinguished both from the public interest (Fiscus) and the interest of the public service. (See C.S. 309/1955, 801/1958, 2178/1970). The said notion is not so vague as not to be subject to judicial control. On the contrary it constitutes a legal notion and therefore it does not escape the control of the Council of State. Example: The refusal to grant a passport by virtue of section 3 of Law 2363/1953 must be duly reasoned by the specification of the serious reason of public order or interest whereby the administration arrived at such refusal (see 154/1954, 1122/1964, 2306/1968, 942/1971 and others".)

Decision 942/1971 of the Greek Council of State to which reference is made in the above notes was one of the cases where the issue of a passport was refused under statutory authority vested in the appropriate authority for the issue of passports to refuse such application for "serious reasons of public order or interest". The material part of the decision reads as follows: (at pp. 1241, 1242)

"'Η κατ' ἐφαρμογὴν τῆς ἀνωτέρω δυνάμεως ἄρνησις τῆς Διοικήσεως ὅπως χορηγήση διαβατήριον εἰς τὸν ὑποβαλόντα σχετικὴν αἴτησιν, δέον, ὡς ἐκ τῆς φύσεως τοῦ μέτρου, συνεπαγομένου περιορισμὸν τῆς προσωπικῆς ἐλευθερίας, νὰ αἰτιολογῆται πλήρως διὰ τῆς ἐξειδικεύσεως τοῦ σοβαροῦ λόγου δημοσίας τάξεως ἢ, συμφέροντος, ἕνεκα τοῦ ὁποίου ἡ ἀποδημία τοῦ ἀναφερομένου ἤθελε καταστῆ ἐπιβλαβὴς εἰς

τὴν χώραν, κατὰ τὴν οὐσιαστικὴν ἐκτίμησιν τῆς Διοικήσεως, ἐρειδομένην ἐπὶ συγκεκριμένων πραγματικῶν περιστατικῶν. Ἡ τοιαύτη δὲ αἰτιολογία δέον νὰ προκύπτῃ εἴτε ἐκ τῆς οἰκείας διοικητικῆς πράξεως περὶ ἀρνήσεως χορηγήσεως διαβατηρίου εἴτε ἐξ ἐγγράφων στοιχείων εἰς ἃ αὕτη ἀναφέρεται.

Ἐπειδὴ ἐν προκειμένῳ ἡ μνημονευθεῖσα 7038/16.9.1970 πρᾶξις τοῦ Διευθυντοῦ Ἀποδημίας καὶ Μεταναστεύσεως, τῆς ὁποίας ἡ αἰτιολογία συνιστᾶ τὴν αἰτιολογίαν τῆς ἐπιδίκου σιωπηρᾶς παραλείψεως τῆς Διοικήσεως, ἀναφέρει ἁπλῶς ὅτι δὲν ἐγκρίνεται ἡ χορήγησις διαβατηρίου εἰς τὸν αἰτιοῦντα πρὸς μετάβασιν του εἰς τὸ ἐξωτερικόν, διὰ σοβαροὺς λόγους δημοσίας τάξεως καὶ συμφέροντος, ἤτοι ἀρκεῖται εἰς τὴν ἁπλὴν ἐπανάληψιν τῆς διατάξεως τοῦ νόμου, μὴ διαλαμβάνουσα τὰ ἐφ' ὧν στηρίζεται συγκεκριμένα περιστατικά, καὶ οὕτω στερεῖται τῆς κατὰ τὴν προηγουμένην σκέψιν ἀπαιτουμένης αἰτιολογίας. Ἡ ἔλλειψις δὲ αὕτη δὲν ἀναπληροῦται ἐκ τῶν στοιχείων τῶν διαβιβασθέντων ὑπὸ τῆς Διοικήσεως φακέλλων, καὶ δὴ τοῦ ὑπ' ἀριθ. 1/395863/203053 ἀπὸ 2.9.1970 ἐγγράφου τῆς Γεν. Δ/σεως Ἐθν. Ἀσφαλείας, τὸ ὁποῖον ἐπικαλεῖται ἡ αὐτὴ πρᾶξις τοῦ Διευθυντοῦ Ἀποδημίας καὶ Μεταναστεύσεως, διότι καὶ ἐν αὐτῷ διατυποῦται ἁπλῶς ἡ γνώμη περὶ τοῦ μὴ ἐνδεδειγμένου τῆς ἀποδημίας τοῦ αἰτοῦντος, διότι οὗτος ἐξερχόμενος θὰ παραβλάψῃ τὰ ἐθνικὰ συμφέροντα, ἄνευ ἐπικλήσεως τῶν περιστατικῶν, κατ' ἐκτίμησιν τῶν ὁποίων ἐσχηματίσθη ἡ γνώμη αὕτη. Συνεπῶς ὁ μοναδικὸς λόγος τῆς ὑπὸ κρίσιν αἰτήσεως, περὶ τοῦ μὴ ἠτιολογημένου τῆς ἐπιδίκου παραλείψεως, ἐλέγχεται βάσιμος, καὶ διὰ τὸν λόγον τοῦτον εἶναι αὕτη ἀκυρωτέα, ὡς καὶ ἡ συνιστῶσα τὴν αἰτιολογίαν αὐτῆς ὡς ἄνω πρᾶξις τοῦ Διευθυντοῦ Ἀποδημίας καὶ Μεταναστεύσεως".

("The refusal of the Administration, in the exercise of the above power to grant a passport to the one submitting the relative application, must, due to the nature of the measure, involving the restriction of personal freedom, be duly reasoned by the specification of the serious reason of public order or interest, by virtue of which the emigration of the above mentioned might become harmful to the country, according to the substantive evaluation of the Administration based on specific facts. Such reasoning should either appear in the respective act refusing the grant of a passport or from written documents to which it refers.

Whereas the above mentioned act 7038/16.9.1970 of the Director of Emigration and Migration, whose reasoning constitutes the reasoning of the sub judice tacit omission of the Administration, simply mentions that the issue of a passport to the applicant for proceeding abroad is not approved for serious reasons of public order and interest, i.e. it is restricted to the mere repetition of the provision of the law, not including the actual facts on which it is based and thus lacking the reasoning required under the above principle. This lack of reasoning is not supplemented by the files submitted by the Administration and especially by No. 1/395863/203053 dated 2.9.1970 document of Gen. Directorate of National Security which is invoked by the said act of the Director of Emigration and Migration because in it, also, the opinion is simply stated that applicant's migration is not indicated, because when he proceeds abroad he will prejudice the national interests, without invoking the facts on whose evaluation this opinion was formed. Therefore the only ground of this application that the sub judice decision is not reasoned is well-founded, and for this reasor it should be annulled as well as the act of the Director of Emigration and Migration constituting its reasoning".)

Also, in Dagtoglou—General Administrative Law 1977 ed. Vol. A at p. 88.

"Τὸ δημόσιο συμφέρον (ἢ ἐθνικὸ, γενικὸ ἢ κοινωνικὸ ἢ κοινὸ συμφέρον) δὲν μπορεῖ νὰ ὁρισθεῖ ἐκ τῶν προτέρων κατὰ τρόπο ποὺ θὰ εἶναι ἀπαλλαγμένο ἀπὸ ἀοριστολογίες, σφάλματα καὶ μονομέρειες. Τὸ δημόσιο συμφέρον εἶναι μία ἔννοια ποὺ ἀποκτᾶ πρακτικὴ, χειροπιαστὴ σημασία, μόνο μὲ τὴν συγκεκριμενοποίησή της".

("The public interest (or national, general or social or common interest) cannot be defined in advance in such a way as to be free from vagueness, mistakes and partialities. The public interest is a notion which acquires practical, evident importance only with its specification".

And at p. 89,

" —'Η συγκεκριμενοποίηση τοῦ δημοσίου συμφέροντος γίνεται πρῶτα-πρῶτα ἀπὸ τὸ ἴδιο τὸ Σύνταγμα, κατόπιν (καὶ

εἰδικότερα) ἀπὸ τὸν νόμο καὶ—κατ' ἐξουσιοδότηση τοῦ νόμου —ἀπὸ τὴν κανονιστικὴ πράξη τῆς διοικήσεως, ἀλλὰ καὶ ἀπὸ τὴν πράξη ποὺ ἐκδίδεται κατ' ἄσκηση τῆς λεγομένης διακριτικῆς εὐχερείας τῆς διοικήσεως.

Τὸ δημόσιο συμφέρον δὲν ἀποτελεῖ λοιπὸν κριτήριον πέρα καὶ ὑπεράνω τοῦ θετοῦ δικαίου, ἀλλὰ ἐκφράζεται ἀπὸ αὐτὸ, μὲ τρόπο καὶ κατὰ τοὺς τύπους ποὺ ἀντιστοιχοῦν στὴν ἱεραρχία τοῦ θετοῦ δικαίου. Μὲ ἄλλα λόγια, τὸ δημόσιο συμφέρον δὲν μπορεῖ νὰ θεμελιώσει ἀπαλλαγὴ ἀπὸ τὴν ἀρχὴ τῆς νομιμότητος, ἀλλὰ, ἀντιθέτως, δημόσιο συμφέρον εἶναι μόνο ὅτι τὰ συνταγματικῶς ὁριζόμενα ὄργανα ὁρίζουν ὡς δημόσιο συμφέρον. Τὰ ὄργανα αὐτὰ εἶναι πρώτιστα ἡ συντακτικὴ καὶ νομοθετικὴ ἐξουσία. Ἡ διοίκηση καθορίζει τὸ δημόσιο συμφέρον μόνο στὸ πλαίσιο τοῦ συντάγματος καὶ τῶν νόμων καὶ μόνο ἐφόσον καὶ καθόσον εἶναι ἐξουσιοδοτημένη πρὸς τοῦτο ἀπὸ τὸ σύνταγμα καὶ τοὺς νόμους".

("——The specification of public interest is made first of all by the Constitution itself, then (and in particular) by the law and—by the authority of the law—by the regulatory act of the administration, but also from the act issued in the exercise of the so–called discretion of the administration.

The public interest does not therefore constitute a criterion over and above the adopted law, but is expressed by it in a manner and with the formalities which correspond to the hierarchy of the adopted law. In other words public interest cannot establish exemption from the rule of legality, but on the contrary public interest is only what the constitutionally appointed organs define as public interest. These organs are firstly the constitutional and legislative powers. The Administration defines the public interest only within the framework of the Constitution and the laws and only so long and as far as it is authorised in this respect by the Constitution and the laws".)

With the above principles in mind and having regard to the reasoning of the sub judice decision, I agree with the submission of learned counsel for the applicant that such decision is not properly or sufficiently reasoned. Such decision is overshadowed by a cloud of generalities invoking allegations of

unbecoming public conduct on the part of the applicant of such nature as to make it necessary in the public interest to impose upon him the ultimate punishment of terminating his permanent appointment with the Government service, without mentioning particulars of such allegations, or the evidence on which the Council of Ministers relied, or any surrounding circumstances and also by failing to specify (έξειδικεύση) the matters of public interest involved. The reasons mentioned in the decision are not such as to enable in the first instance, the person concerned, and the Court on review, to ascertain whether the decision is well founded in fact and in law (see *Zavros'* case (supra) ).

The Minister's letter to the applicant conveying to him the decision of the Council of Ministers and the decision itself as recorded in the minutes of the Council of Ministers, are so obscure and substantially inadequate and would leave in the mind of an informed reader such real and substantial doubt as to the reasons for such decision and as to the matters which the Council of Ministers did or did not take into account in taking the sub judice decision, that they do not comply with the well established principles of proper reasoning, compliance to which is necessary under the general and well established principles of administrative law.

In view of the above, I have reached the conclusion that the sub judice decision is defective and in the result has to be annulled.

Independently of my above conclusion, I am coming now to consider the next question which is posed, as to whether in the circumstances of the present case, and assuming that the Council of Ministers had competence in the matter, it was within such competence of the Council of Ministers to terminate the applicant's service in the Government, in violation of the rules of Natural Justice and without affording him the protection guaranteed by such rules.

Counsel for the respondent submitted that the sub judice decision was an administrative measure taken by the Council of Ministers in the public interest under section 7 of Cap. 311 and not a disciplinary sanction, and in consequence, the Council of Ministers was not legally bound to accord to the applicant

the right to be heard, though, as he conceded, ideally it would have been better if such right was given to the applicant. In support of this argument, he relied on certain extracts from the "Conclusions of the Case Law of the Council of State in Greece, 1929–1959), the decisions of the Greek Council of State in Case No. 1005/33, No. 354/38, No. 1711/65, No. 670/58 and No. 1415/58, to the French Administrative Law as expounded by Odent "Contentieux Administratif" (1965–1966) at p. 166 and Plantey "Traite Pratique de la Fonction Publique" Paris, 1971 at p. 123 and, finally, to the decisions of this Court in *Christodoulou* v. *The Republic* (1968) 3 C.L.R. 603. Cases No. 1005/33, No. 354/38 and 670/58 to which reference has been made by counsel for respondent, deal with powers of the Council of Ministers in Greece to dismiss a Mayor or a Municipal or Communal Council, derived from express provisions in the "Municipalities and Communities Laws" for the purpose of securing the proper functioning of a Municipality. Some of such cases further deal with the constitutionality of certain provisions in the said laws. Such cases are distinguishable from the present one and cannot be of any assistance in the matters under consideration.

Case No. 1711/65 does not advance the argument of counsel for respondent, but on the contrary, it is against such argument and may be rather cited in support of the contention of applicant that the rules of Natural Justice have to be observed. This case (1711/65) deals with the temporary suspension of the service of a public officer for a period of six months which may be extended for a further period of six months under express legislative provisions of Law 2500/1953 in cases specifically enumerated therein mainly dealing with inefficiency or inability of the public officer to perform his duties and lack of co-operation with his colleagues or with the Minister within whose jurisdiction the service of the officer falls. The last part of such decision, reads as follows:-

" Ἐπειδή, ἐν προκειμένῳ, τὸ Ὑπουργικὸν Συμβούλιον, ὡς δείκνυται ἐκ τῆς προσβαλλομένης ἀποφάσεώς του, ἔκρινεν ὅτι ἐπιβάλλεται, κατ' ἐφαρμογὴν τῶν ἀνωτέρω διατάξεων, ἡ θέσις τοῦ αἰτοῦντος εἰς διαθεσιμότητα διὰ τοὺς ἐν τῇ εἰσηγήσει τοῦ Ὑφ. τῆς Προεδρ. τῆς Κυβερνήσεως ἐκτιθεμένους ἐν λεπτομερείᾳ λόγους. Εἰδικώτερον ἡ κρίσις αὕτη τοῦ

'Υπουργικοῦ Συμβουλίου ἐστηρίχθη εἰς τὰς διὰ τῆς ἀνωτέρω εἰσηγήσεως τοῦ 'Υφυπουργοῦ ἀποδιδομένας εἰς βάρος τοῦ αἰτιοῦντος συγκεκριμένας αἰτιάσεις, αἵτινες συνίστανται εἰς ἀνωμαλίας ἐν τῇ ἐκτελέσει σοβαρῶν ἔργων ἀναστηλώσεως, εἰς αὐθαιρεσίας καὶ παραβάσεις τῶν κειμένων διατάξεων κατὰ τὴν ὑπ' αὐτοῦ ἄσκησιν τῶν καθηκόντων του ὡς Διευθυντοῦ 'Αναστηλώσεων καὶ εἰς τὴν ἔλλειψιν πνεύματος συνεργασίας πρὸς τοὺς συναδέλφους του καὶ τὸν προϊστάμενον αὐτοῦ 'Υφυπουργόν, πασῶν τῶν αἰτιάσεων τούτων συναγομένων ἐκ τῶν εἰδικῶν ἐν τῇ ἀνωτέρω εἰσηγήσει μνημονευομένων ἐνεργειῶν ἢ παραλείψεων τοῦ προσφεύγοντος. 'Υπὸ τὰ δεδομένα ὅμως ταῦτα καὶ λαμβανομένου ὑπ' ὄψιν ὅτι ἡ κρίσις περὶ τοῦ σκοπίμου τῆς ἐπιβολῆς ἐν προκειμένῳ τοῦ μέτρου τῆς διαθεσιμότητος ἐρείδεται κυρίως ἐπὶ τῶν ὡς ἄνω ἀποδιδομένων συγκεκριμένων ὑπαιτίων παραβάσεων εἰς βάρος τοῦ αἰτοῦντος, ἔδει, κατὰ τὴν ἀληθῆ ἔννοιαν τῶν ἐν τῇ προηγουμένῃ σκέψει παρατεθεισῶν διατάξεων, νὰ προηγηθῇ κλῆσις αὐτοῦ πρὸς παροχὴν ἐξηγήσεων ἐπὶ τῶν ὡς εἴρηται αἰτιάσεων, ἵνα οὕτω τὸ 'Υπουργικὸν Συμβούλιον, ἐν ὄψει καὶ τῶν ἐξηγήσεων τοῦ προσφεύγοντος, ἀποφανθῇ περὶ τῆς ἀνάγκης τῆς ἐπιβολῆς εἰς βάρος αὐτοῦ τοῦ δυσμενοῦς μέτρου τῆς διαθεσιμότητος. 'Εν προκειμένῳ ὅμως, ὡς ἐκ τοῦ φακέλλου προκύπτει δὲν ἐτηρήθη ὁ ἀνωτέρω οὐσιώδης τύπος τῆς διαδικασίας καὶ, συνεπῶς, διὰ τὸν λόγον τοῦτον, αὐτεπαγγέλτως ὑπὸ τοῦ Δικαστηρίου ἐξεταζόμενον, ἀκυρωτέα ἀποβαίνει ἡ προσβαλλομένη ἀπόφασις τοῦ 'Υπουργικοῦ Συμβουλίου καὶ τὸ ἐπὶ ταύτης ἐρειδόμενον Βασ. Διάταγμα περὶ θέσεως τοῦ αἰτοῦντος εἰς διαθεσιμότητα, περιττῆς οὕτω καθισταμένης τῶν λοιπῶν λόγων ἀκυρώσεων".

("Whereas, in this respect, the Council of Ministers as is shown by its sub judice decision has decided that, in application of the above provisions it is necessary to interdict the applicant for the reasons stated in detail in the submission of the Deputy Minister of the Presidency of the Covernment. Particularly this decision of the Council of Ministers was founded on the specific accusations which by means of the above submission of the Deputy Minister were attributed to the applicant, which consist of anomalies in the execution of serious building works, arbitrarinesses and breaches of existing provisions in the execution by him of his duties as Director of erection works and the

lack of a sense of co–operation towards his colleagues and his superior Deputy Minister, all these accusations gathered from the special in the above submission acts or omissions of the applicant. On the above facts and having in mind that the decision on the desirability of the imposition in this respect of the measure of interdiction is based mainly on the above attributted specific culpable breaches against the applicant, there should on the true meaning of the provisions stated in the above opinion, have preceded a call on him to give explanations on the said accusations, and thus the Council of Ministers, in view, also, of the explanations of the applicant, may decide on the necessity of the imposition against him of this onerous measure of interdiction. But in this respect, as it appears from the file, the above essential formality of the proceedings has not been observed, and therefore, for this reason, having been examined by the Court on its own motion, the sub judice decision of the Council of Ministers and the Royal Decree based thereon interdicting the applicant, are null and void thus rendering unnecessary the other reasons for annulment".)

The recent trend, however, in Greece appears to have superseded that of the old cases concerning the right of hearing. Such trend is explained in "Administration and the Law" (Διοίκησις καὶ Δίκαιον) by Tsoutsos 1979 Ed. at pages 132–133 as follows:–

"Σαφέστερον καὶ ἀποτελεσματικώτερον ἡ νομολογία τοῦ ἑλληνικοῦ Συμβουλίου τῆς 'Επικρατείας ἐστράφη προσφάτως ὑπὲρ τῆς ἐφαρμογῆς τῆς ἀρχῆς τῆς ἀκροάσεως ἐπὶ λήψεως μέτρου προσωπικοῦ χαρακτῆρος κατ' ἀσκούντων δημόσιον λειτούργημα, ἐν ἀντιθέσει πρὸς τὴν παλαιοτέραν νομολογίαν[1]. 'Η κλῆσις τοῦ ἐνδιαφερομένου ἀπῃτήθη ὑπὸ προσφάτου ἀποφάσεως τοῦ Συμβουλίου τῆς 'Επικρατείας[2] ἐπὶ τῆς ἐφαρμογῆς τοῦ ἄρ. 24 τοῦ ν. 184/1914 'Περὶ συστάσεως ἐμπορικῶν καὶ βιομηχανικῶν ἐπιμελητηρίων', ὡς ἀντικατεστάθη διὰ τοῦ ἄρ. 2 τοῦ ν.δ/τος 2649/1953(297), ὁρίζοντος ὅτι τὰ διοικητικὰ συμβούλια τῶν ἐμπορικῶν καὶ βιομηχανικῶν ἐπιμελητηρίων δύνανται νὰ διαλυθοῦν δι' ἀποφάσεως τοῦ 'Υπουργοῦ 'Εμπορίου πλὴν ἄλλων λόγων, καὶ ἕνεκεν ἀταξιῶν περὶ τὴν διοίκησιν ἢ τὴν ἐκπλήρωσιν τῶν ἔργων αὐτῶν,

1. Σ.τ.Ε. 1311/56, περὶ ἧς ἀνωτέρω.
2. Σ.τ.Ε. 419/65.

παρέχεται δὲ εἰς τὸν Ὑπουργὸν ἡ εὐχέρεια, ἀντὶ νὰ διαλύσῃ τὸ διοικητικὸν συμβούλιον, νὰ ἀπαγγείλῃ τὴν ἔκπτωσιν μελῶν τινων τῆς διοικούσης ἐπιτροπῆς ἢ καὶ τὴν διάλυσιν ταύτης. Τὸ οὕτω λαμβανόμενον μέτρον δὲν ἔχει πειθαρχικὸν χαρακτῆρα, ἀλλ' ἀποτελεῖ μέτρον τάξεως, ἐφ' ὅσον ἐσημειώθησαν ἀνωμαλίαι τὰς ὁποίας τὰ ἁρμόδια ὄργανα δὲν ἠδυνήθησαν νὰ προΐδουν καὶ νὰ προλάβουν, λαμβανόμενον πρὸς ἀποκατάστασιν τῆς ὁμαλῆς λειτουργίας τῶν ὡς εἴρηται ἐπιμελητηρίων καὶ ἔχον οὕτω κατ' ἀρχὴν ἀντικειμενικὸν χαρακτῆρα.

Ἐφ' ὅσον ὅμως τὸ μέτρον τοῦτο ἀπευθύνεται εἰδικῶς καθ' ὡρισμένου μέλους τῶν ὀργάνων διοικήσεως τῶν ὀργανισμῶν τούτων, κηρυσσομένου ἀτομικῶς ἐκπτώτου τοῦ ἀξιώματός του, ἐκρίθη ὅτι λόγω τοῦ προσωπικοῦ χαρακτῆρος, ὃν λαμβάνει τὸ μέτρον, καὶ τῆς καταλογιζομένης οὕτω εἰς τὸν κηρυσσόμενον ἔκπτωτον ὑπαιτιότητος, δέον ὅπως οὗτος καλῆται προηγουμένως πρὸς παροχὴν τουλάχιστον ἐξηγήσεων, ὥστε νὰ ἐξασφαλίζηται ἡ ἀπὸ πάσης πλευρᾶς ἀρτία ἀντιμετώπισις τοῦ ζητήματος ἐκ μέρους τοῦ Ὑπουργοῦ.

Συνεπῶς, καὶ ἐπὶ λήψεως μέτρου ρητῶς χαρακτηριζομένου ὡς διοικητικοῦ καὶ οὐχὶ ὡς πειθαρχικοῦ, ἐπιβάλλεται τὸ πρῶτον ἡ κλῆσις πρὸς παροχὴν ἐξηγήσεων τοῦ προσώπου, τὸ ὁποῖον πρόκειται εἰδικῶς νὰ θιγῇ, διατυπουμένου ψόγου εἰς βάρος του. Ἡ προσέγγισις τῆς λύσεως ταύτης πρὸς τὴν ὡς ἄνω ἐκτεθεῖσαν νομολογίαν τοῦ γαλλικοῦ Συμβουλίου Ἐπικρατείας, ἐπὶ λήψεως μέτρων κατ' ἀσκούντων δημόσια λειτουργήματα, εἶναι λίαν προφανής.

Ἐπὶ πλέον καὶ ἐπὶ ἐπιβολῆς τοῦ μέτρου τῆς διαθεσιμότητος εἰς βάρος δημοσίου ὑπαλλήλου ἡ νομολογία εὗρε τὴν εὐκαιρίαν νὰ ἐφαρμόσῃ τὴν ἀρχὴν τῆς ἀκροάσεως. Συγκεκριμένως ἐπρόκειτο περὶ τῆς προβλεπομένης ὑπὸ τοῦ ἄρ. 9 τοῦ ν.δ/τος 2500/1953 διαθεσιμότητος, εἰς ἣν τίθενται ἀνώτεροι μόνιμοι πολιτικοὶ ὑπάλληλοι μετ' ἀπόφασιν τοῦ Ὑπουργικοῦ Συμβουλίου, ἐκδιδομένην ἐπὶ τῇ ἠτιολογημένῃ προτάσει τοῦ ἁρμοδίου Ὑπουργοῦ, ἐφ' ὅσον δὲν διαθέτουν τὴν διὰ τὴν ἀπρόσκοπτον λειτουργίαν τῆς ὑπηρεσίας ἢ ἀπόδοσιν ηὐξημένου ἔργου ἀναγκαίαν ἐπάρκειαν ἢ καταλληλότητα, ἢ δὲν ἐπιδεικνύουν πνεῦμα συνεργασίας μετὰ τῶν συναδέλφων των ἢ τοῦ προϊσταμένου Ὑπουργοῦ. Εἰς περίπτωσιν

καθ' ἣν ἡ κρίσις περὶ θέσεως εἰς διαθεσιμότητα ἐστηρίχθη εἰς συγκεκριμένας αἰτιάσεις, συναγομένας ἐξ ἐνεργειῶν ἢ παραλείψεων τοῦ ὑπαλλήλου, ἐγένετο δεκτὸν ὅτι τὸ μέτρον τῆς διαθεσιμότητος δύναται νὰ ληφθῇ μόνον κατόπιν κλήσεως τοῦ ἐνδιαφερομένου πρὸς παροχὴν ἐξηγήσεων ἐπὶ τῶν ἀποδιδομένων αὐτῷ συγκεκριμένων ὑπαιτίων παραβάσεων, ἵνα τὸ Ὑπουργικὸν Συμβούλιον ἐν ὄψει καὶ τῶν ἐξηγήσεων τούτων ἀποφανθῇ περὶ τῆς ἀνάγκης τῆς ἐπιβολῆς τοῦ δυσμενοῦς μέτρου τῆς διαθεσιμότητος. Ἡ κλῆσις αὕτη πρὸς παροχὴν ἐξηγήσεων ἀποτελεῖ οὐσιώδη τύπον τῆς διαδικασίας ἐξεταζόμενον αὐτεπαγγέλτως ὑπὸ τοῦ δικαστηρίου, ἡ μὴ τήρησις τοῦ ὁποίου ἐπάγεται ἀκυρότητα τῆς περὶ θέσεως εἰς διαθεσιμότητα ἀποφάσεως".

("In a clearer and more effective way the jurisprudence of the Greek Council of State lately leaned towards the implementation of the rule of hearing on the taking of measures of personal character against persons holding public offices in contrast to the previous jurisprudence*. The hearing of the interested party was required by a recent decision of the Council of State** in the application of Section 24 of Law 184/1914 'Establishment of Chambers of Commerce and Industry' as replaced by section 2 of cider 2649/1953 (297), providing that the Boards of the Chambers of Commerce and Industry may be dissolved by a decision of the Minister of Commerce besides other reasons, and because of irregularities in the administration or the completion of their works, and the Minister is vested with the discretion, instead of dissolving the Board, to pronounce the dismissal of some members of the Board or even its dissolution. The thus taken measure does not have a disciplinary character but it constitutes a measure of order since there have been irregularities which the appropriate organs were unable to foresee and prevent taken for the restoration of the smooth functioning of the said chambers and having thus on principle an objective character.

But since this measure is directed specially against a certain member of the administrative organs of these Organizations declaring him personally dismissed from his

* Case No. 1311/56 of the Greek Council of State.

** Case No. 419/65 of the Greek Council of State.

post, it was decided that, due to personal character, which the measure takes, and the accusation attributed to the one declared as dismissed, he should be called before hand to give at least explanations, so as to safeguard from every aspect the entire handling of the problem by the Minister. Therefore, and on the taking of a measure expressly described as administrative and not as disciplinary it is imperative that the person, who is to be specially affected by attributing blame on him, be called upon to furnish an explanation. The approach of this solution to the above stated jurisprudence of the French Council of State, on the taking of measures against persons holding public offices, is quite obvious.

In addition and on the imposition of the measure of interdiction against a public officer the jurisprudence has found the chance to implement the rule of hearing. Precisely it was about the interdiction envisaged by section 9 of order 2500/1953, imposed on senior permanent political officers by a decision of the Council of Ministers issued on the reasoned submission of the appropriate Minister once they do not possess the required sufficiency or fitness or increased output for the unfettered functioning of the service or they do not show a sense of co-operation with their colleagues or the superior Minister. In case the decision for placing under interdiction was based on specific accusations gathered by acts or omissions of the officer, it was accepted that the measure of interdiction can be taken only after calling on the interested party to give explanations on the attributed to him specific accusations, so that the Council of Ministers in view of these explanations may decide on the necessity of the imposition of the onerous measure of interdiction. This calling for the furnishing of explanations constitutes an essential formality of the proceedings being examined by the court on its own motion, and its non-observance renders void the decision to impose an interdiction".)

And he concludes at page 134 as follows:-

"Κατὰ ταῦτα δυνάμεθα ἐν συμπεράσματι νὰ εἴπωμεν ὅτι κατὰ τὴν νομολογίαν τοῦ ἑλληνικοῦ Συμβουλίου τῆς Ἐπικρατείας ἡ ἀρχὴ τῆς ἑκατέρωθεν ἀκροάσεως ἐπιβάλλεται καὶ ἄνευ ρητῆς διατάξεως εἰς τὰς ἐξῆς περιπτώσεις:

(α) Προκειμένης ἐπιβολῆς πειθαρχικῆς ποινῆς εἰς πρόσωπον εὑρισκόμενον ἐν ὑπηρεσιακῇ ἐξαρτήσει ἐκ τῆς Διοικήσεως.

(β) Ἐπὶ λήψεως διοικητικοῦ μέτρου, ἀπευθυνομένου εἰδικῶς καθ' ὡρισμένου προσώπου ἀσκοῦντος δημόσιον λειτούργημα λόγῳ ἀποδιδομένης εἰς αὐτὸ ὑπαιτιότητος.

(γ) Ἐπὶ ἐπιλύσεως ὑπὸ διοικητικοῦ ὀργάνου ἀμφισβητήσεως, ἐγειρομένης μεταξὺ δύο μερῶν ἢ κατὰ διοικητικῆς πράξεως, ἐξ ἧς ὠφελεῖταί τις".

("Therefore, we can in conclusion, say that according to the jurisprudence of the Greek Council of State the rule of hearing both sides is obligatory without any express provisions in the following instances:

(a) In respect of the imposition of a disciplinary punishment on a person who is officially depended on the Administration.

(b) On the taking of an administrative measure directed specially at a certain person exercising a public function due to blame attributed to him.

(c) On resolving by an administrative organ of a dispute which has arisen between two parties or against an administrative act, whereby someone has derived some benefit".)

The case of *Christodoulou* v. *The Republic* (supra) is distinguishable from the present case. In that case the Court was dealing with a measure, not amounting to a disciplinary one, taken by the Commander of Police in the exercise of a legitimate right under the Police (General) Regulations 1958 to 1960.

As to the position under the French Administrative Law, reference will be made later in this judgment, when citing the case of *The Republic of Cyprus and Antonios Mozoras* (1966) 3 C.L.R. 356, where the principles under the French Law, are expounded.

Having considered the position under the Greek Administrative Law, I turn now to the sources of our own jurisprudence on this matter emanating from our Constitution, statutory enactments and the decisions of our Supreme Court.

One important case in this respect is *The Republic of Cyprus* and *Antonis Mozoras* (supra) which was decided at a time when there was no express statutory provision laying down the procedure to be followed by the Public Service Commission when exercising its functions under Article 125.1 of the Constitution. Such provision has since been laid down by the enactment of the Public Service Law 33/67 to which I have already referred earlier in this judgment. Josephides, J. had this to say at pp. 399, 400:-

> "As pointed out in the opening paragraphs of this judgment, the whole case turns on the construction which may be placed on Article 125.1 of our Constitution. Under that paragraph it is the duty of the Public Service Commission to 'retire and exercise disciplinary control over, including dismissal or removal from office, of public officers'. The question which arises for consideration is, in the absence of any express statutory provision, laying down the procedure to be followed, the rules of evidence to be applied, or conferring any powers on the Commission, what is the proper course to be followed by the Commission in carrying out that duty? As held in previous cases, the Commission in exercising disciplinary control has to comply with certain well-established principles of natural justice and the accepted procedure governing the dismissal of public officers (*Andreas A. Marcoullides and The Republic* (Public Service Commission), 3 R.S.C.C. 30 at page 35).
>
> Now, what are the rules or principles of natural justice? The two essential elements of natural justice are in modern times usually expressed as follows:
>
> (a) no man shall be judge in his own cause; and
>
> (b) both sides shall be heard, or audi alteram partem.
>
> Other principles which have been stated to constitute elements of natural justice, e.g. that the parties must have due notice of when the tribunal will proceed, etc., may be said to be merely extensions or refinements of the two main principles stated above.
>
> According to Professor B. Schwartz in his book entitled 'French Administrative Law and the Common Law World'

(1954), at page 207, the British Courts have endeavoured to ensure administrative fair play through the concept of natural justice. The principles of natural justice can be said to be as much a part of British administrative Law as the procedural demands that the United States Supreme Court has held are required of the American administration under the 'due-process' clause.

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Throughout the web of our system of administration of justice in Cyprus (if I may borrow the happy phrase of Lord Chancellor Sanky in another context in the *Woolmington* case) one golden thread is always to be seen, that is to say, that a person is entitled to a fair hearing, which means that he must be informed of the accusation made against him and given an opportunity of being heard before judgment is passed on him. These principles are now enshrined in our Constitution, Articles 12.5 and 30 reproducing the provisions of Article 6 of the Rome Convention on Human Rights of 1950. As was very aptly said in Dr. Bentley's Case (1723), 1 Stra. 557: 'Even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' says God, 'Where art thou? Hast thou not eaten of the tree that thou shouldst not eat?' There is, however, no obligation on the part of a body carrying out an inquiry, unless a statute so provides, that a hearing should be oral (*Local Government Board* v. *Arlidge* [1915] A.C. 120. Even in a court of law evidence may in proper circumstances be given by affidavit".

And the judgment goes on at pp. 402-403.

"As observed by Professor Schwartz (supra), at page 207, the procedural starting point of the droit administratif in France was the principle that the administration was held to observance of only those procedural requirements that were imposed by some legal text. The Conseil D'Etat would annul administrative action for procedural defects only if the agency concerned failed to follow a procedure demanded expressly by statute or regulation. The British experience shows, however, that the courts can impose upon the administration the fundamentals of fair procedure,

even in the absence of a judicially enforceable constitutional provision like the American due-process clause. And since 1944 the Conseil d'Etat has, in one of the most significant changes in its jurisprudence that has ever occurred, imported into the droit administratif something very much like the British concept of natural justice. This change in the attitude of the French Tribunal was clearly shown for the first time in the case of the widow Trompier--Gravier decided by the Conseil d'Etat on the 5th May, 1944. In that case the administration had summarily revoked the petitioner's permit to operate a stand from which she sold papers on one of the main Paresian boulevards. There was no requirement imposed by statute or regulation for notice and hearing in such a case. But, nevertheless, it was held by the Conseil D' Etat in that case that the person concerned should be given notice and enabled to present her defence. It should, however, be added that under the provisions of a Statute of 1905 in disciplinary matters against civil servants, a hearing was required as the statute gave the civil servant the right to be informed of the case against him.

It will thus be seen that by the Trompier-Gravier decision the Conseil D'Etat in France has given the right to the individual to be heard by the administration even though not expressly provided for by the legislature, and that by this decision the French Tribunal has imported into the droit administratif something very much like the concept of natural justice as understood and applied in Britain. In both countries the courts have acted without the aid of an express constitutional provision such as the due-process clause in American constitutions".

In the case of *Andreas Marcoullides and The Republic* (1962) 3 R.S.C.C. 30 to which reference is made in the above judgment, it was held:-

"(1) any provision in the terms and conditions of appointment of officers of the Electricity Authority concerning dismissal without notice was rendered inoperative by Art. 125.1 Disciplinary control of public officers, including dismissal, was a matter of public and not of private law,

within the exclusive competence of the Public Service Commission, governed by the principles of natural justice".

The rules or principles of natural justice have also been expounded in *HadjiGeorghiou* v. *The Republic* (1968) 3 C.L.R. 326.

In *Nicos Kalisperas and The Republic*, 3 R.S.C.C. 146, it was held:

"(2) where a transfer was about to be made both for reasons of misconduct and for other reasons and the line could not easily be drawn the rule to be applied should be the essential nature and predominant purpose of the particular transfer, cases of doubt being always resolved by treating the transfer as one for disciplinary reasons".

In *Maro N. Pantelidou and The Republic* (1963) 3 R.S.C.C. p. 100 it was held:–

"(a) .....

(b) inefficiency, as such, should not, in the absence of any express provision to the contrary, be treated as a disciplinary matter necessitating the giving of an opportunity to the officer concerned to be heard before his services were terminated, provided the decision by the P.S.C. to terminate such services was taken after full examination of all relevant facts in the matter;

(c) where the termination of the services of the officer in the public service was made both for reasons of inefficiency and for misconduct and there was a doubt as to the essential nature and the predominant reason for such termination, as in the instant case, such doubt should be resolved by treating such termination of services as if it was for disciplinary reasons thus affording the officer concerned the safeguards ensured to him by the procedure applicable to disciplinary matters, even though the reason for dismissing a public officer might, prima facie, be so overwhelming as to render it improbable that anything would be forthcoming from him which would render his dismissal unnecessary".

In *Antonios Michael* v. *The Republic* (1972) 3 C.L.R. 206, Hadjianastassiou, J. had this to say at p. 216:-

> "Regarding the complaint of the applicant that the decision of the Council of Ministers was in the form of a punishment, and was made for disciplinary reasons, counsel on behalf of the respondent quite fairly put forward the proposition that if the Court in the light of the material before it reached the conclusion that the said decision was not of an administrative nature but a disciplinary punishment, the Court was entitled to declare null and void the said decision since the discretionary powers of the Council were exercised in a defective manner.
>
> Having kept open the question of competence, I shall now proceed to answer the questions raised by counsel, and in doing so, I assume that the Council of Ministers had competence to decide the question of the termination of the employment of the applicant. It has been judicially said in a number of cases that where the Supreme Court finds excess or abuse of power on the part of the administration, this is done over, in addition to, or as consequence of finding also that there has been disregard or violation of other principles accepted by the administrative law. Violation or disregard, therefore, of the principles such as disregard of the rules of natural justice, misconception of law, of facts, invalid or defective exercise of discretion, lack of due reasoning etc., are implied into our Article 146, as grounds of annulment by virtue of the principle in *Morsis* v. *The Republic* (1965) 3 C.L.R. 1 at p. 8".

Also, in *Niki Ladaki Philippou* v. *The Republic* (1981) 3 C.L.R. 153, it was held that:-

> "In case of doubt whether a transfer is disciplinary or not then such doubt ought to be resolved by treating the transfer in question as being disciplinary in order to afford the public officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters".

Finally, I shall conclude this long line of authorities, by referring to the recent case of *Koudounas* v. *The Republic* (1981) 3 C.L.R. p. 46 where it was held that:-

"The Commission, in not promoting or seconding the applicant to the post in question, was unduly influenced, acted contrary to the principles of natural justice, and did not give the applicant a chance to repudiate all those damning allegations against him; that it was the duty of the Commission, once they had in their hands the said report, to postpone their final decision and institute disciplinary proceedings under the Disciplinary Code (section 73 (1) of Law 33/67)".

Having expounded on the principles or rules of natural justice, I am coming now to consider whether such principles are applicable to the present case.

As I have already mentioned, the complaint in the present case relates to the sub judice decision of the Council of Ministers to terminate the service of the applicant as Director-General of the Ministry of Communications and Works which was communicated to him by letter dated 11th June, 1981. It is from the contents of such decision that one has to find out whether the action taken against the applicant was an administrative measure or a disciplinary sanction. It is abundantly clear that the reason why the service of the applicant was terminated, was because he was guilty of "unbecoming conduct in public" the effect of which was to undermine and fetter the proper functioning of the State and its public service. The Council of Ministers reached such conclusion, as it appears from the minutes of the Council, after a thorough examination of the material produced before it relating to such conduct.

A mere perusal of the contents of the said decision as recorded in the Minutes of the Council and of the letter communicating the decision to the applicant and with all surrounding circumstances in mind, leaves no room for doubt that the predominant purpose of the sub judice decision taken by the Council of Ministers was to impose upon the applicant a disciplinary punishment, the most serious one, for alleged public misconduct, without affording him the opportunity of being heard. Even if any doubt might have existed, which in the present case does not exist, I would have reached the same conclusion allowing the benefit of doubt to operate in favour of the applicant. (*Marcoullides and The Republic* (supra), *Kalisperas and The Republic* (supra), *Pantelidou and The Republic* (supra) ). Matters

of inefficiency or inability to perform his duties are not alleged against the applicant; on the contrary, it was admitted that till the termination of his service, he was both a competent and able public officer.

Having found as above, the respondent was bound to afford the applicant the right to be informed of the accusations against him and the chance to repudiate same.

There is one more reason why the applicant should have been afforded the right of being informed of the accusations against him and be given the chance of repudiating such accusations. Applicant had been in the public service prior to the Independence and at a time when the Colonial Regulations were regulating the procedure to be followed in case of dismissal of a public officer in the public interest. Reference has already been made to the provisions of Regulation 59. Under such Regulation, he had to be informed of the report of the heads of the department in which he had served and be given the opportunity of submitting a reply to the complaints by reason of which his retirement was contemplated. Such provision was part of the terms and conditions of his service which after Independence have been safeguarded under Article 192.1 of the Constitution and could not be altered to his disadvantage.

In the result, I have reached the conclusion that the Council of Ministers by failing to inform the applicant of the accusations against him and give him the opportunity to make his defence, had acted in flagrant violation of the basic rule of natural justice which is summarised in the maxim "audi alteram partem". Also, by depriving him of his vested right under the terms and conditions of his service before the Independence day, afforded to him by the Colonial Regulations and in particular Regulation 59 which terms and conditions have been safeguarded under Article 192.1 of the Constitution, the Council of Ministers has violated Article 192.1.

For all the above reasons the sub judice decision has to be annulled on this ground as well.

Independently of my finding that the decision of the respondent amounts to a disciplinary sanction and the rules of natural justice had to be complied with, I wish further to add that even

in cases where a decision is not of a disciplinary nature but is an administrative measure, as suggested by counsel for the respondent, it is well settled that when an administrative decision assumes the character of a sanction and has sufficiently adverse effect on the position of an individual, as in the circumstances of the present case, the courts require that the person affected should be given the opportunity of questioning the reason for the adverse decision. This principle has been laid down in the decision of the French Council of State in the case of Dame Veuve Trompier—Gravier to which reference is made in *The Republic of Cyprus* v. *Mozoras* (supra) and which was adopted by this Court in *Mikis HadjiPetris* v. *Republic* (1968) 3 C.L.R. 702 at p. 706. See also *Psaltis* v. *Republic* (1971) 3 C.L.R. 372 at p. 373, as to the right of a person interested in a matter pending before the administration for decision involving a sanction to be personally heard by it before the decision is taken.

In view of my above conclusion, I leave open the question as to the effect of reliance by the Council of Ministers on section 7 of the Pensions Law, Cap. 311, on the validity of the sub judice decision in the light of the opinion I have already expressed earlier in this judgment, that section 7 is merely an ancillary provision enabling the Council of Ministers to grant pension or gratuity where the service of a public officer is terminated in the public interest and not a provision giving power to terminate the service of a public officer in the public interest.

Once I have concluded that there was a violation of one of the basic rules of natural justice, I need not deal with the alleged violation of the second important rule that one cannot be a judge in his own cause which was advanced in support of the argument that once the alleged conduct of the applicant was directed against the Government which in the circumstances consists of the President and his Ministers, the respondent could not have taken the sub judice decision because by so doing it was becoming a judge in its own cause.

I have concluded on the issue of violation of the rules of natural justice on the assumption that the Council of Ministers had competence to deal with the alleged misconduct of the applicant. I am coming now to consider whether the Council of Ministers was vested with such competence. In dealing with

the previous ground of law, I found that the decision of the Council of Ministers imposed upon the applicant a disciplinary punishment for alleged misconduct. The question posing for consideration as a result of such finding is: Was the Council of Ministers competent in the circumstances to take such decision concerning the applicant and impose on him the punishment of his dismissal from the public service?

Under Article 125.1 of the Constitution the organ expressly entrusted with the duty of "exercising disciplinary control over, including dismissal or removal from office of, public officers" is the Public Service Commission established under Article 124 of the Constitution. As I have mentioned earlier in this judgment, in 1967 an organic law was enacted (Law 33/67) to provide amongst other things, for the procedure in disciplinary matters and I have already referred to the procedure under sections 80, 81 and 82 and the functions of the P.S.C. under section 5. The fundamental duties of public officers are set out in section 58(1) and breach of any such duties constitutes an offence which is included in the disciplinary offences set out in section 73(1) in respect of which disciplinary proceedings may be taken against him and in case he is found guilty to render him liable to the sentences set out in section 79(1).

The finding of the Council of Ministers of unbecoming conduct in public undermining the State and its public service on the part of the applicant, is a finding amounting to the breach of the fundamental duties of a public officer under section 58(1)(b)(d) and (e) of Law 33/67 and rendering him subject to the disciplinary powers of the Public Service Commission for a disciplinary offence under section 73(1). Disciplinary control of public officers including dismissal is a matter within the exclusive competence of the Public Service Commission (see *Neajati* v. *The Republic* (supra) *Marcoullides and The Republic* (1962) 3 R.S.C.C. 30, *HadjiSavva* v. *The Republic* (supra) *Lyssiotou* v. *The Republic* (supra)).

The respondent in the present case, as it appears from the minutes of the decision, assumed competence under the provisions of section 7 of Cap. 311 on a disciplinary matter which, as I have already found, is within the exclusive competence of the Public Service Commission. There cannot at one and

the same time be two authorities with concurrent power to exercise disciplinary control over public officers, the one an independent organ deriving its powers from the Constitution and the other the Government itself relying on legislative provision. The object of the introduction in our Constitution of Article 125.1, as already explained, was to entrust the safeguarding of the efficiency and proper functioning of the public service of the Republic, expressly including the exercise of disciplinary control over public officers, to the Public Service Commission, an independent and impartial organ outside the governmental machinery, and, at the same time, safeguarding the protection of the legitimate interests of public officers. If such power was also retained by the Government, the whole object of Article 125.1 would be defeated and the safeguarding afforded to public officers by such Article would have disappeared.

The principle that there cannot at one and the same time be two authorities with concurrent power to exercise disciplinary control over public officers came for consideration before the Privy Council in England in the case of *Kanda* v. *Government of the Federation of Malaya* [1962] A.C. 322, which presents many common features with the present case. The facts of the case were as follows:-

> "Article 135(1) of the Constitution of the Federation of Malaya, which came into operation on Merdeka Day (August 31, 1957), provided: 'No member of any of the services'—which included the police service—'shall be dismissed ——— by an authority subordinate to that which, at the time of the dismissal ——— has power to appoint a member of that service of equal rank'.
>
> By art. 140(1): 'There shall be a Police Service Commission, whose jurisdiction shall, subject to article 144, extend to all persons who are members of the police service'.
>
> Article 144(1) provided: 'Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission ——— to appoint ——— and exercise disciplinary control over members of the service ——— to which its jurisdiction extends'.
>
> In July, 1958, the Commissioner of Police in Malaya

purported to dismiss the appellant, an inspector of police, on the ground that at an inquiry before an adjudicating officer he had been found guilty on a charge of failing to disclose evidence at a criminal trial. While under the law as it existed before Merdeka Day the commissioner had, pursuant to the Police Ordinance, 1952, power to dismiss an inspector, the appellant contended that after the coming into force of the Constitution that power was only in the Police Service Commission, to which the commissioner was a subordinate authority, and he sought a declaration that his purported dismissal by the commissioner was void and of no effect".

Lord Denning in delivering the judgment had this to say at page 333:-

"..... ...It appears their Lordships that, as soon as the Yang di-Pertuan Agong appointed the Police Service Commission, that commission gained jurisdiction over all members of the police service and had the power to appoint and dismiss them. It is true that under article 144(1) the functions of the Police Service Commission were 'subject to the provisions of any existing law': but this meant only such provisions as were consistent with the Police Service Commission carrying out the duty entrusted to it. If there was in any respect a conflict between the existing law and the Constitution (such as to impede the functioning of the Police Service Commission in accordance with the Constitution) then the existing law would have to be modified so as to accord with the Constitution".

And at page 334:-

"It appears to their Lordships that, in view of the conflict between the existing law (as to the powers of the Commissioner of Police) and the provisions of the Constitution (as to the duties of the Police Service Commission) the Yang di-Pertuan Agong could himself (under article 162(4) ), have made modifications in the existing law within the first two years after Merdeka Day. (The attention of their Lordships was drawn to modifications he had made in the existing law relating to the railway service and the prison service). But the Yang di-Pertuan Agong did

not make any modifications in the powers of the Commissioner of Police, and it is too late for him now to do so. In these circumstances, their Lordships think it is necessary for the court to do so under article 162(6). It appears to their Lordships that there cannot, at one and the same time, be two authorities, each of whom has a concurrent power to appoint members of the police service. One or other must be entrusted with the power to appoint. In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail".

(The Yang di Pertuan Agong referred to in the above judgment is the Head of the State under the Constitution of Malaya).

In view of my finding that disciplinary control over public officers is within the exclusive competence of the Public Service Commission, the Council of Ministers by assuming such competence in the present case, has acted in excess and/or abuse of powers and in the result, the sub judice decision becomes null and void on this ground as well.

Having dealt with a number of grounds under which the sub judice decision has to be annulled, I consider it unnecessary to examine the other legal grounds raised in this recourse, such as to whether the Council of Ministers was properly constituted when the decision was taken and as to whether there was a quorum of the Council at the meeting when the decision was taken.

For all the above reasons this recourse succeeds and the sub judice decision of the Council of Ministers is hereby annulled.

Before concluding, I wish to express my appreciation for the able and elaborate way that both counsel, counsel for the applicant and counsel for the respondent, presented their case and thus rendered valuable assistance to me in reaching my decision.

As regards costs, in the circumstances of this case and having taker into consideration the legal questions involved, I make no order for costs.

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