1982 August 26

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PAVLOS SEMELIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTRY OF EDUCATION AND/OR THE EDUCATIONAL SERVICE COMMITTEE,

Respondents.

(*Case No.* 315/79).

Disciplinary Offences—Disciplinary conviction—Judicial control—Principles applicable.

Administrative Law—Misconception of fact—Principles applicable—For the existence of misconception of fact there is required an objective non-existence of the actual circumstances and pre-requisites upon which the act is based which is ascertained in the absence of the element of the subjective test.

Administrative Law—Facts—Determination of, by the Administration—Judicial Control—Principles applicable.

The applicant a schoolmaster in the Secondary Education was tried disciplinarily by the respondent Committee on a charge containing sixteen counts. Eight of the counts referred to acts or omissions of the applicant showing lack of loyalty and of devotion to the Republic of Cyprus during the Coup d'etat of July, 1974 and the other eight referred to acts or omissions amounting to a contravention of the duties or obligations of an Educational Officer. At the conclusion of the trial the applicant was acquitted and discharged on the first fourteen counts and found guilty*, by majority, on the last two counts**. There-

* The relevant passage of the decision of the respondent appears at p. 749 post.

** The particulars of these counts appear at p. 748 post.

upon the Committee imposed on the applicant the disciplinary punishment of stoppage of his annual increments for a period of two years.

Upon a recourse against the above decision it was contended on behalf of the applicant:

(a) That the respondent Committee acted under a misconception of fact inasmuch as the acquittal of the applicant on the first fourteen counts, by the respondent Committee non-accepting the evidence regarding his alleged activities, as set out in the particulars thereof, should have also led to his acquittal of counts 15 and 16, which were alternative counts to the rest.

(b) That the decision of the respondent Committee was not based on the evidence adduced and the accepted facts of the case and was not examined in conjunction with the rest of the evidence and its findings in relation to the other counts and it was therefore contradictory to its previous conclusions and could not stand.

Held, that an administrative Court in dealing with a recourse made against a disciplinary conviction should not as a rule interfere with the subjective valuation of the relevant facts as made by the appropriate organ; that for the existence of misconception of fact there is required an objective non-existence of the actual circumstances and prerequisites upon which the act is based which is ascertained in the absence of the element of the subjective test; that there does not exist a misconception of fact when the administration determines items which in substance are different and conflicting, which determination may in principle lead to the conclusion arrived at by the administration; that the substance of such determination is not controlled in the annulment trial; that the ground for annulment directed against the administration's determination of the facts or questioning its determination of the merits, is unacceptable, since is not proved to be the product of a misconception of fact or in excess of the extreme limits of the discretionary power of the administration; that it cannot be said that the respondent Committee acted under any misconception of fact since there was no, objectively examined, non-existence of the acts and conduct referred to in the decision against which the recourse

has been filed; that on the contrary, a perusal of the record shows that there was ample material before the respondent Committee to arrive at the conclusion it did; that its appreciation of the facts, — having decided upon the credibility of the witnesses, — which were found by it to have occurred, justified their evaluation and assessment as constituting the conduct charged in counts 15 and 16 of the charge; that the fact that the applicant was acquitted on the remaining counts could not inevitably lead to the conclusion that he was innocent of counts 15 and 16 as well inasmuch as he was found to have uttered the phrase referred to therein and to have conducted himself in a manner that it made it reasonably open for the respondent Committee to conclude that they established these two disciplinary offences of which he has been found guilty; accordingly the recourse should fail.

Application dismissed.

Cases referred to:

Enotiadou v. *Republic* (1971) 3 C.L.R. 409;

Lambrou v. *The Republic* (1972) 3 C.L.R. 79;

Georghiades v. *The Republic* (1972) 3 C.L.R. 594;

Decisions of the Greek Council of State Nos. 1508/1950, 2654/1965 and 1129/1966.

Recourse.

Recourse against the decision of the respondents whereby applicant was found guilty of two disciplinary offences.

E. Efstathiou, for the applicant.

A.S. Angelides, for the respondents.

Cur. adv. vult.

A. Loizou J. read the following judgment. Against the applicant who has been a schoolmaster in the Secondary Education since 1959, there were instituted on the 14th December 1978, before the respondent Committee, disciplinary proceedings and he was charged with sixteen counts (exhibit A). Eight of them referred to acts or omissions showing lack of loyalty and of devotion to the Republic of Cyprus and of respect to the Laws, or in any way tending to promote the Coup d' Etat or the overthrow of the Constitutional order or the State structure, contrary to section 2 of The Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977 (Law No. 3 of 1977). The other eight referred to acts

or omissions amounting to a contravention of the duties or obligations of an Educational Officer, contrary to section 63 of the Public Educational Service Law, 1969, (Law No. 10 of 1969).

The hearing of the case commenced on the 26th January and was concluded on the 22nd June 1979 when the applicant was acquitted and discharged on counts 1 to 14 inclusive and was found guilty on counts 15 and 16 by a majority of its members, the Chairman dissenting.

Counts 15 and 16 are as follows:

"Count 15.

Statement of the Disciplinary Offence.

Disciplinary offence as defined in Section 2 of Law 3 of 1977, i.e. acts or omissions showing lack of loyalty and devotion to the Republic of Cyprus and respect to the Laws or in any way tending to promote the Coup d' etat or the overthrow of the Constitutional order of the state structure.

Particulars of the Disciplinary Offence.

On the 18 July 1974 you visited loyal arrested detainees at Larnaca Rural Station when you made propaganda in favour of the Coup d' Etat by saying among other things the following: 'The Coup d' Etat is a revolution and has taken place for just and for unjust and all those who are unjust will pay.'

Count 16.

Statement of the Disciplinary Offence.

Acts or omissions or conduct amounting to a contravention of the duties or obligations of an Educational Officer contrary to Section 63 of Law 10 of 1969.

Particulars of the Disciplinary Offence.

On the 18 July 1974 you visited loyal arrested detainees at the Larnaca Rural Station when you made propaganda in favour of the Coup d' Etat by saying among other things the following 'the Coup d' Etat is a revolution and

has taken place for just and unjust and those that are unjust will pay.' "

The judgment of the respondent Commission was delivered on the 22nd June 1979 (exhibit X). After the Chairman summed up the evidence which had been adduced, he gave the reasons for acquitting the applicant on the first fourteen counts as well as his own dissenting judgment for acquitting him on counts 15 and 16 as well, whereas in respect of these latter two counts the following is recorded:

"Counts 15 and 16. The members Georghiou, Papadouris and Papadopoullos, accept the evidence adduced (Odyssea Christodoulou, Minutes 13th March 1979 p. 3, Mina Hadji-Costa, Minutes 22nd March 1979, pp. 8 and 9), but also the statement of the accused p. 4 of the Minutes of the 9th April 1979. ' Έγινε μιὰ ἐπανάσταση παιδιὰ ἐδῶ καὶ γιὰ δικαίους καὶ ἀδίκους θὰ τιμωρηθοῦν οἱ ἔνοχοι, ἐσεῖς δὲν ἔχετε νὰ φοβηθῆτε τίποτε.' 'Chaps a revolution has taken place here and for just and unjust those guilty will be punished, you do not have to be afraid at all.' The fact that the various witnesses coloured in different ways what was said by the accused, to describe a schoolmaster of literature of the calibre of the accused, the Coup d' Etat as a revolution and that the guilty will pay allows no other interpretation than that which coldly and simply convey the expression 'a revolution has taken place and those guilty will pay'. Therefore they find the accused guilty in Counts 15 and 16. They believe that the accused has been concerned to see that some of his friends were freed".

The Chairman, then asked the accused if he had anything to say before a disciplinary punishment was imposed on him and after his counsel left the matter to the respondent Committee, although his client, he stated was innocent, the respondent Committee imposed on the applicant the disciplinary punishment of stoppage of his annual increments for a period of two years. It terminated then his interdiction as from the 23rd June 1979, and with regard to the deductions from his emoluments made during his interdiction, the respondent Committee decided that the whole sum deducted be refunded to him.

The particulars for the first fourteen counts for which the applicant was acquitted were these. Counts 1 and 2, that on the 15th July 1974, during the curfew he was seen celebrating with officers of the National Guard for the success of the Coup d' Etat. Counts 3 and 4, that between the 16th and 19th of July 1974 he was seen visiting at the Larnaca Rural Station detainees, accompanied by the Coup d' Etat activist Kouppis and was cooperating with him travelling in the same car. Counts 5 and 6, that in the afternoon of the 15th July, he was seen outside the Kitium Bishopric dressed in grey green uniform, holding a loudspeaker and asking loyal persons in it to give themselves up to the Coup d' Etat activists. Counts 7 and 8, that between the 16th and the 19th of July he was seen repeatedly moving freely within the Central Police Station of Larnaca and cooperating with the Coup d' Etat activists and in particular he was visiting regularly the office of the Divisional Police Commander, which was used as Head-quarters by the Coup d' Etat people. Counts 9 and 10, that on the 17th July 1974, after the Central Police Station was taken over by the Coup d' Etat people, the applicant was seen wearing a grey green uniform, carrying a pistol in a leather case and shaking hands with Papapanayiotou, the Coup d' Etat activist from Greece and he said, 'glory to all Mighty, let us now go to the Church and make our cross". Counts 11 and 12, that on the 16th July 1974, he was seen with grey green uniform visiting the Coup d' Etat Captain of the National Guard Nicolettis, who was in the army barracks opposite GSZ Larnaca. Counts 13 and 14, that on the 19th July 1974, in the evening Georghios Angelides was taken to the Central Police Station for interrogation he was present at the Station and waited outside, opposite the door of the office and watched the interrogation.

It has been the case for the applicant that the respondent Committee acted under a misconception of fact inasmuch as the acquittal of the applicant on the first fourteen counts, by the respondent Committee nonaccepting the evidence regarding his alleged activities, as set out in the particulars thereof, should have also led to his acquittal of counts 15 and 16, which were alternative counts to the rest. Moreover it was urged that the decision of the respondent Committee was not based on the evidence adduced and the accepted facts of the case and was not examined in conjunction with the rest of the evidence and

its findings in relation to the other counts and it was therefore contradictory to its previous conclusions and could not stand.

It was argued that the applicant could not be found to have been making propaganda in favour of the Coup d' Etat when he paid a visit at the Larnaca Rural Station, which at the time was under the control of the Coup d' Etat forces, which included a certain Kouppis who had a leading position in the Coup d' Etat and who was present and accompanying the applicant, as the expressions used by him at such a visit in addressing the persons detained were made for the purpose of pacifying those detained, and it was so inoffensive that the witnesses either did not notice or paid no attention or did not remember exactly the expressions used

In the case of *Enotiadou* v. *The Republic* (1971) 3 C.L.R. p. 409, it was held that an administrative Court in dealing with a recourse made against a disciplinary conviction should not as a rule interfere with the subjective valuation of the relevant facts as made by the appropriate organ. In support of this proposition reference is made therein to decisions numbers 2654/1965 and 1129/1966 of the Greek Council of State. In the case of *Lambrou* v. *The Republic* (1972) 3 C.L.R. p. 79, it was held that the disciplinary conviction of that applicant was in the view of the Court reasonably open to the respondent Committee and reconfirmed what was said in the *Enotiadou case* (supra). In *Lefkos Georghiades* v. *The Republic* (1972) 3 C.L.R. p. 594, it was held as to the argument set forth by the respondent the officer concerned, the existence or not of facts or the reasonableness of the inferences drawn thereof by the appellant, Public Service Commission—sitting as a disciplinary tribunal—that it was enough for the Court to state that there was ample material before the Commission on which it was entitle to arrive at the conclusion it did and it did not interfere and substitute its own view for that of the Commission which had duly weighed the probative effect of the evidence and had correctly arrived at the conclusion that the facts and circumstances, which it was its duty to consider, amounted to the disciplinary offences of which the officer was found guilty.

At p. 692 of the report I dealt with the difference that exist between a right of appeal to the First Section of the Council

of State in Greece from a disciplinary decision to the right of a recourse under Article 146 of the Constitution to this Court from such a decision and I referred to *Kyriakopoullos Greek Administrative Law*, 4th edition volume 3 p. 305 where it is stated that the Council of State may arrive at a different appreciation of facts which are the foundation for the disciplinary liability. I indicated, however, that "the fact that the Council of State determines the merits of the appeal, does not only emanate from section 34, paragraph (1) of Law No. 3713, but also from section 1, paragraph (6) of the Code of the Administrative Civil Servants which sets down the general rule by which—'in accordance with the said law in a recourse before the Council of State is determined by it and on its merits.' "

I then went on to point out the legal principles governing the extent that an administrative Court will interfere with the determination of the factual basis of an administrative act or decision, as contained in a number of decisions, which can be found in the Digest of Decisions of the Greek Council of State for the years 1961–1963, volume A (A—N) p. 77 under the heading "The Nonreviewability of Determination on the Merits". They set out the principle that the ground for annulment directed against the administration's determination of the facts or questioning its determination on the merits, is rejected as unacceptable, since is not proved to be the product of a misconception of fact or in excess of the extreme limits of the discretionary power of the administration. Moreover I adopted the summing up made in the *Conclusions of the Case Law of the Greek Council of State* (1929–1959) p. 268, regarding the question of misconception of fact, for the existence of which there is required an objective nonexistence of the actual circumstances and prerequisites upon which the act is based which is ascertained in the absence of the element of the subjective test, and that there does not exist a misconception of fact when the administration determines items which in substance are different and conflicting, which determination may in principle lead to the conclusion arrived at by the administration. The substance of such determination not being controlled in the annulment trial.

I still believe that the aforesaid principles represent the correct legal position on the matter and they apply with equal force to the case in hand.

In our case the respondent Committee has ascertained the acts of the applicant according to its unfettered judgment and having described them as constituting the disciplinary offence of acts or omissions showing lack of loyalty and devotion to the Republic of Cyprus and respect to its Laws or as tending to promote the Coup d' Etat or the overthrow of, the Constitutional Order, or the State structure and also as being acts or omissions or conduct amounting to a contravention of the duties or obligations of an educational officer, the act against which this recourse is directed, renders the subject decision, as pointed out in decision 1508/50 of the Greek Council of State legally reasoned.

Moreover it cannot be said that the respondent Committee acted under any misconception of fact since there was no, objectively examined nonexistence, as argued on behalf of the applicant, of the acts and conduct referred to in the decision against which the recourse has been filed. On the contrary, a perusal of the record shows that there was ample material before the respondent Committee to arrive at the conclusion it did. Its appreciation of the facts—having decided upon the credibility of the witnesses—which were found by it to have occurred, justified their evaluation and assessment as constituting the conduct charged in counts 15 and 16 of the charge, that is that it amounted to propaganda in favour of the Coup d' Etat.

The fact that the applicant was acquitted on the remaining counts could not inevitably lead as argued to the conclusion that he was innocent of counts 15 and 16 as well inasmuch as he was found to have uttered the phrase referred to therein and to have conducted himself in a manner that it made it reasonably open for the respondent Committee to conclude that they established these two disciplinary offences of which he has been found guilty.

For all the above reasons this recourse is dismissed, but in the circumstances I make no order as to costs.

Application dismissed. No order as to costs.