

1983 June 11

[TRIANTAFYLIDES, P.]

IN THE MATTER OF AN APPLICATION BY
ANDREAS CHRISTODOULOU FOR LEAVE TO APPLY
FOR AN ORDER OF PROHIBITION.

(Civil Application No. 13/83).

*Prohibition—Disciplinary proceedings—Are administrative and not
judicial proceedings—In view of exclusivity and separation of the
jurisdictions under Articles 146.1 and 155.4 of the Constitution,
prohibition can only be made in relation to judicial matters and not,
5 also, in relation to administrative matters in respect of which
the remedy under Article 146.1 is available.*

*Disciplinary offences—Constituting, also, criminal offences—Whether
the person concerned must be first prosecuted before a Court
and be dealt with disciplinarily afterwards.*

10 This was an application for leave to apply for an order of
prohibition preventing a Disciplinary Board, set up under the
National Guard legislation, from dealing with disciplinary
charges which have been preferred against the applicant in re-
spect of events which, allegedly, constituted, also, offences con-
15 trary to the Criminal Code, Cap. 154.

Held, that disciplinary proceedings are administrative pro-
ceedings and not judicial proceedings; that in view of the
exclusivity and separation of the jurisdictions under Articles
146.1 and 155.4 of the Constitution, a prerogative order under
20 Article 155.4, such as prohibition, can only be made in relation
to judicial matters and not, also, in relation to administrative
matters in respect of which the remedy under Article 146.1 is
available; accordingly the application must fail.

Held, further, that though it is correct that the applicant is for
25 the time being charged with disciplinary offences arising out of
circumstances in respect of which later on he may or may not be
charged with criminal offences, there is not any provision in the
Constitution, or in any statute, or any general principle of law,

which requires that in a situation such as this the person concerned must be first prosecuted before a Court and that he can be dealt with disciplinarily only afterwards.

Application dismissed.

Cases referred to:

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Ramadan v. The Electricity Authority, 1 R.S.C.C. 49 at pp. 53, 54;

In re Frangos (1981) 1 C.L.R. 691 at pp. 695, 696;

In re Kalathas (1982) 1 C.L.R. 835.

Application.

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Application for leave to apply for an order of prohibition preventing a Disciplinary Board, set up under the National Guard legislation, from dealing with disciplinary charges preferred against the applicant in respect of events which, allegedly, constitute offences contrary to the Criminal Code, Cap. 154.

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K. Talarides, for the applicant.

K. Michaelides with *D. Papadopoulou (Mrs.)*, for the Republic.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. The applicant seeks leave to apply for an order of prohibition preventing a Disciplinary Board, set up under the National Guard legislation, from dealing with disciplinary charges which have been preferred against the applicant in respect of events which, allegedly, constitute, also, offences contrary to the Criminal Code, Cap. 154.

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Under the National Guard Disciplinary Regulations (see Regulations No. 554, Third Supplement to the Official Gazette of 3.12.64, as amended by Regulations No. 240, Third Supplement, Part I, to the Official Gazette of 24.11.78) the infringement by a member of the National Guard of any "law" in force at the material time - and the Criminal Code in such a "law" - may be treated as constituting a disciplinary offence and this is what, apparently, has happened in the present instance.

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It is correct that the applicant is for the time being charged with disciplinary offences arising out of circumstances in respect of which later on he may or may not be charged with criminal offences. There is not, however, any provision in our Constitution, or in any statute, or any general principle of law, which requires that in a situation such as this the person concerned must be first prosecuted before a Court and that he can be dealt with disciplinarily only afterwards.

It is well settled that disciplinary proceedings are administrative proceeding and not judicial proceedings; and in view of the exclusivity and separation of the jurisdictions under Articles 146.1 and 155.4 of the Constitution it has been established for a long time by our case-law that a prerogative order under Article 155.4, such as prohibition, can only be made in relation to judicial matters and not, also, in relation to administrative matters in respect of which the remedy under Article 146.1 is available.

The said case-law, which started as far back as *Ramadan v. The Electricity Authority*, 1 R.S.C.C. 49, 53, 54, has been reaffirmed on many occasions and for the purposes of this judgment it suffices to mention that it was referred to rather recently in *In re Frangos*, (1981) 1 C.L.R. 691, 695, 696 (and, on appeal, (1983) 1 C.L.R. 256, as well as in *In re Kalathas*, (1982) 1 C.L.R. 835.

Under the jurisdiction conferred on this Court by means of Article 155.4 of the Constitution it is not possible to prevent, by an order of prohibition, the usurpation of judicial functions by a disciplinary organ, even assuming as correct the contention of counsel for the applicant - with which I do not agree - that the Disciplinary Board concerned will be usurping judicial functions by dealing with the disciplinary charges against the applicant. This Court can prevent, by an order of prohibition, under Article 155.4, only a judicial organ, and not, also, an administrative disciplinary organ, from exceeding its powers by way of usurpation of powers or otherwise. If the Disciplinary Board exceeds in the present instance its powers the proper remedy exists only under Article 146.1 of the Constitution, to the exclusion of any other remedy, such as those under Article 155.4; and, in this respect, there should not be lost sight of that once a recourse is filed under Article 146.1 there arises the possibility

to apply, in a proper case, for interim relief in the form of a provisional order under rule 13 of the Supreme Constitutional Court Rules of Court.

In the light of all the foregoing this application for leave to apply for an order of prohibition has to be refused as no useful purpose can be served by granting such leave since in any event this Court does not possess jurisdiction to issue an order of prohibition in the present instance. 5

Consequently, this application is dismissed.

Application dismissed. 10