

1982 January 16

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOANNIS ZENIOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR AND OTHERS,

Respondents.

(Case No. 33/77).

Administrative Law—Misconception—Material misconception—Reasonable probability that a misconception has led to the taking of a decision justifies its annulment—Decision of Deputy Commander of Police imposing punishment of dismissal on the applicant
5 *—Reasonable probability that it was based on the misconception that applicant's conduct immorally motivated—Annulled.*

10 The applicant, a Police Constable, was tried disciplinarily on two charges and was sentenced to pay a fine of C£15 in respect of the first one and a fine of C£2 in respect of the second. In the relevant decision it was stressed that though he had behaved in a manner which was detrimental to the reputation of the Police there had not been established that he had acted with any immoral intentions.

15 Upon appeal by the Assistant Commander of Police, by virtue of his powers under regulation 20(3)(c) of the Police (Discipline) Regulations, 1958, to the Deputy Commander of Police against the punishment which had been imposed on the applicant, on the ground that such punishment was inadequate the Deputy
20 Commander of Police reached the conclusion that the proper punishment was, in the circumstances of the case, the dismissal of the applicant from the Police Force. Hence this recourse:

It was abundantly clear from the record before the Court that

the appeal to the Deputy Commander of Police was filed, presented and determined on the assumption that the applicant had been found, at his disciplinary trial, to have behaved in a manner tainted with immorality; and thus the Deputy Commander of Police acted on the basis of the misconception that the relevant conduct of the applicant was immorally motivated 5

Held, that in order to succeed in annulling the relevant administrative decision an applicant has only to show that there exists a reasonable probability that a misconception has led to the taking of such decision, that in this case there has been established a reasonable probability that the decision of the Deputy 10
Commander of Police to impose on the applicant the disciplinary punishment of dismissal from the Police was based on a material misconception and, consequently, such decision has to be annulled. 15

Sub judice decision annulled.

Cases referred to.

Kozakis v. Council of Ministers (1967) 3 C.L.R. 265 at p. 268,
Mallinos v. Electricity Authority of Cyprus (1974) 3 C.L.R.
220 at p. 224; 20
Thalassinos v. Republic (1974) 3 C.L.R. 290 at p. 294;
Christodouliou v. C.Y.T.A. (1978) 3 C.L.R. 61 at p. 69;
Ioannides v. Republic (1972) 3 C.L.R. 318 at pp. 324, 325, 326;
HjiMichael and Others v. Republic (1972) 3 C.L.R. 246 at p.
252. 25

Recourse.

Recourse against the decision of the respondents whereby applicant was dismissed from the Police Force by way of a disciplinary punishment.

M. Christophides, for the applicant. 30

N. Charalambous, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

TRIANTAFYLIDIS P. read the following judgment. By means of the present recourse the applicant challenges the decision 35
of the Deputy Commander of Police by which he was dismissed from the Police Force by way of disciplinary punishment.

The applicant was, at all material times, a police constable, having enlisted in the Police in 1964.

As a result of complaints regarding his behaviour there were preferred against him two disciplinary charges, the one for
5 improper conduct and the other for neglect of duty.

At his disciplinary trial the applicant was found guilty of both charges and was sentenced to pay a fine of C£15 in respect of the first one and a fine of C£2 in respect of the second.

There was stressed in the relevant decision that though the
10 applicant had behaved in a manner which was detrimental to the reputation of the Police there had not been established that he had acted with any immoral intentions.

The said decision was confirmed by the Divisional Police
15 Commander. Then, the Assistant Commander of Police, by virtue of his powers under regulation 20(3)(c) of the Police (Discipline) Regulations, 1958, appealed to the Deputy Commander of Police against the punishment which had been imposed, as above, on the applicant, on the ground that such punishment was inadequate.

20 After hearing the appeal the Deputy Commander of Police reached the conclusion that the proper punishment was, in the circumstances of the case, the dismissal of the applicant from the Police Force.

It is abundantly clear from the record before me that the
25 appeal to the Deputy Commander of Police was filed, presented and determined on the assumption that the applicant had been found, at his disciplinary trial, to have behaved in a manner tainted with immorality, whereas the decision by means of which he was found guilty, and against which the Assistant Com-
30 mander of Police did not lodge an appeal, expressly excluded any immoral intentions on the part of the applicant.

In view of the foregoing it seems that on appeal there was held that the punishment which was imposed on the applicant was inadequate, and as a result he was dismissed from the Police
35 instead of being fined only, because the Deputy Commander of Police acted on the basis of the misconception that the relevant conduct of the applicant was immorally motivated.

It is clear from our case-law that in order to succeed, in a case of this nature, in annulling the relevant administrative

decision an applicant has only to show that there exists a reasonable probability that a misconception has led to the taking of such decision (see, in this respect, inter alia, *Kozakis v. The Council of Ministers*, (1967) 3 C.L.R. 265, 268, and *Mallouros v. The Electricity Authority of Cyprus*, (1974) 3 C.L.R. 220, 224). 5

In *Thalassinos v. The Republic*, (1974) 3 C.L.R. 290, there were stated (at p. 294) the following:

“... there exists, to put it at its lowest, substantial doubt about the validity of the factual basis of the sub judice decision of the Commission; and this being so the proper course for us, as an administrative Court, is not to allow this decision to stand, but to set it aside, so as to give an opportunity to the Commission to re-examine the whole matter free from any misconception;” 10

Reference may be made, too, to the following passage from the judgment in the case of *Christodoulou v. The Cyprus Telecommunications Authority*, (1978) 3 C.L.R. 61, 69: 15

“... I am of the opinion that the relevant administrative process is vitiated by a material misconception; and that a material misconception of fact, or even the probability of its existence, justifies the annulment of an administrative act or decision is a well-settled principle of administrative law (see, inter alia, *Ioannides v. The Republic*, (1972) 3 C.L.R. 318, 324, 325, 326 and *Hji Michael and Others v. The Republic*, (1972) 3 C.L.R. 246, 252)”. 20 25

In the present case I am satisfied that there has been established a reasonable probability that the decision of the Deputy Commander of Police to impose on the applicant the disciplinary punishment of dismissal from the Police was based on a material misconception and, consequently, such decision has to be annulled; and it is up to the Deputy Commander of Police to reconsider on the correct basis the outcome of the appeal against the disciplinary punishments of payment of fines which were imposed initially on the applicant. 30

As a result this recourse succeeds; but in the light of all relevant considerations I shall make no order as to the costs of this case. 35

Sub judice decision annulled. No order as to costs.