

1983 February 12

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS GAVRIEL,

*Applicant.*

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

*Respondents.*

(Case No. 10 80).

*Disciplinary offences—Member of Police Force—Disciplinary Investigations—Set in motion under the provisions of the “Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977 (Law 3/77)—And later remitted to the Police Authorities for further investigation and adjudication, by virtue of section 4 of the “Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 Suspension of Proceedings Law”, 1978 (Law 57/78)—Whole disciplinary process conducted in accordance with relevant legislative provisions—Depositions of witnesses would not be materially different if the investigations were conducted under the Police (Discipline) Regulations, 1958.*

*Disciplinary offences—Disciplinary conviction and punishment—Judicial control—Principles applicable—Court cannot, as a rule, interfere with the subjective evaluation of the relevant facts by the competent organs.*

*Administrative Law—Misconception—Disciplinary conviction—Though applicant called upon to defend himself on count as amended he was found guilty on such count as it existed prior to its amendment—Conviction vitiated by a material misconception—And rules of natural justice contravened.*

The applicant challenged the decision of the Deputy Commander of Police by means of which he was found guilty

on nine counts of disciplinary offences and was sentenced to pay a total amount of C£290 by way of fines and his annual increment was withheld for one year

Counsel for the applicant contended

- (a) That the sub judge decision must be annulled inasmuch as the investigations in relation to the disciplinary offences concerned should have been conducted on the basis of the relevant provisions of the Police (Discipline) Regulations 1958, and not on the basis of the provisions of Law 3/77, because, the contents of the depositions of witnesses which were taken under Law 3/77 must be regarded as having been influenced by political motives which, allegedly, were prevailing during such investigations even though, as has been conceded by counsel for the applicant, such depositions were lawfully taken under Law 3/77 5 10 15
- (b) That due to alleged contradictions in the testimony of some witnesses at the disciplinary trial, as well as, previously, in their depositions, the conviction of the applicant was not warranted 20
- (c) That the conviction of applicant on count 2 and the sentence imposed on him in respect of it should be annulled because the finding of guilt in relation to this count was based on particulars of alleged conduct of the applicant which were no longer in existence 25

Regarding (c) above though leave was granted to amend the particulars regarding the alleged conduct on which count 2 was based, in the end the applicant was found guilty on such count on the basis of the particulars stated in it before its amendment and not on the basis of the new particulars which were introduced by means of the said amendment 30

*Held*, (1) that under section 4 of Law 57/78 the depositions taken under Law 3/77 could be transmitted to the appropriate police authorities for further disciplinary action, and this has been done in the present instance, that there can, therefore, be no doubt that the whole disciplinary process was conducted in accordance with the relevant legislative provisions, and that, further the depositions of the witnesses would not be materially 35

different if the investigations were conducted under the provisions of the Police (Discipline) Regulations 1958, and not under the provisions of Law 3/77, accordingly contention (a) should fail.

(2) That there was ample evidence before the disciplinary organs concerned rendering it reasonably possible for them to hold, in the first instance and on appeal, that the applicant was guilty as charged, and that in determining a recourse such as the present one this Court cannot, as a rule, interfere with the subjective evaluation of the relevant facts by the competent organs, accordingly contention (b) should, also, fail

(3) That the conviction of the applicant on count 2 is vitiated by a material misconception as to the correct facts on which it was founded and, therefore, it has to be annulled.

*Held*, further, that the annulment of the conviction of the applicant on count 2 is necessary because the rules of natural justice were contravened inasmuch as though he was called upon to defend himself on the amended count 2 he was later found guilty on such count as it existed, differently framed, prior to its amendment

*Recourse succeeds in part*

Cases referred to

*Shakellis v Republic* (1981) 3 C.L.R. 440 at p. 448,

*Christofides v C.Y.I.A.* (1979) 3 C.L.R. 99 at p. 125,

*Liotiadou v Republic* (1971) 3 C.L.R. 409 at p. 415,

*Hadjichalambous v Republic* (1981) 3 C.L.R. 309 at p. 313,

*Havvaras v. Republic* (1981) 3 C.L.R. 492 at p. 496;

*Christodoulou v. C.Y.T.A.* (1978) 3 C.L.R. 61 at p. 69.

### Recourse.

Recourse against the decision of the respondent by means of which applicant was found guilty of disciplinary offences and was sentenced to pay £290.- fine and his annual increment was withheld for one year.

*A Andreou*, for the applicant.

*A Papasavvas*, Senior Counsel of the Republic, for the respondent.

*Cur. adv. vult.*

TRIANAFYLLIDES P. read the following judgment. By the present recourse the applicant challenges a decision of

the Deputy Commander of Police, dated 31st October 1979, by means of which he was found guilty of disciplinary offences in respect of which he was sentenced to pay a total amount of C£290 by way of fines and his annual increment was withheld for one year. 5

The disciplinary process against the applicant was, at first, set in motion under the provisions of the "Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law", 1977 (Law 3/77), but later the Council of Ministers, in exercise of its powers under section 4 of the "Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 Suspension of Proceedings Law", 1978 (Law 57/78), remitted the case of the applicant to the Police authorities for further investigation and adjudication. 10

At the disciplinary trial of the applicant he was found guilty on nine counts; in respect of eight of them he was sentenced to pay fines ranging from C£30 to C£50 and in respect of the other one (count 2) it was ordered that his annual increment should be withheld for one year. 15

The applicant appealed against his conviction and the sentences that were imposed on him, as above, to the Divisional Commander of Larnaca who dismissed the appeal on the 10th October 1979, and then the applicant appealed to the Deputy Commander of Police who dismissed his appeal on the 31st October 1979; and against this final decision the present recourse has been filed. 20 25

It has been contended by counsel for the applicant that the sub judice decision must be annulled inasmuch as the investigations in relation to the disciplinary offences concerned should have been conducted on the basis of the relevant provisions of the Police (Discipline) Regulations, 1958, and not on the basis of the provisions of Law 3/77, above, because, according to counsel for the applicant, the contents of the depositions of witnesses which were taken under Law 3/77 must be regarded as having been influenced by political motives which, allegedly, were prevailing during such investigations even though, as has been conceded by counsel for the applicant, such depositions were lawfully taken under Law 3/77. 30 35

Under section 4 of Law 57/78 the depositions taken under Law 3/77 could be transmitted to the appropriate police authorities for further disciplinary action; and this has been done in the present instance. There can, therefore, be no doubt that the whole disciplinary process was conducted in accordance with the relevant legislative provisions. Nor can I accept as correct the contention of counsel for the applicant that the depositions of the witnesses would be materially different if the investigations were conducted under the provisions of the Police (Discipline) Regulations, 1958, and not under the provisions of Law 3/77.

Counsel for the applicant has, also, submitted that due to alleged contradictions in the testimony of some witnesses at the disciplinary trial, as well as, previously, in their depositions, the conviction of the applicant was not warranted. It suffices to say, in this respect, that I cannot uphold this submission as valid since there was ample evidence before the disciplinary organs concerned rendering it reasonably possible for them to hold, in the first instance and on appeal, that the applicant was guilty as charged; and in determining a recourse such as the present one this Court cannot, as a rule, interfere with the subjective evaluation of the relevant facts by the competent organs (see, in this respect, inter alia, *Shakallis v. The Republic*, (1981) 3 C.L.R. 440, 448, *Christofides v. Cyprus Telecommunications Authority*, (1979) 3 C.L.R. 99, 125, and *Enotiadou v. The Republic*, (1971) 3 C.L.R. 409, 415).

It has been further contended on behalf of the applicant that his conviction on count 2 and the sentence imposed on him in respect of it should be annulled because, as it appears from the record of the disciplinary proceedings, the finding of guilt in relation to this count was based on particulars of alleged conduct of the applicant which were no longer in existence. It is correct that at a certain stage of the disciplinary trial leave was granted to amend the particulars regarding the alleged conduct on which count 2 was based, but in the end the applicant was found guilty on such count on the basis of the particulars stated in it before its amendment, and not on the basis of the new particulars which were introduced by means of the said amendment. I am, consequently, of the view that the conviction of the applicant on count 2 is vitiated by a material misconception as to the correct facts on which it was founded and,

therefore, it has to be annulled (see, in this respect, inter alia, *HadjiCharalambous v. The Republic*, (1981) 3 C.L.R. 309, 313, *Haviaras v. The Republic*, (1981) 3 C.L.R. 492, 496 and *Christodoulou v. The Cyprus Telecommunications Authority*, (1978) 3 C.L.R. 61, 69). Moreover, the annulment of the conviction of the applicant on count 2 is necessary because the rules of natural justice were contravened inasmuch as though he was called upon to defend himself on the amended count 2 he was later found guilty on such count as it existed, differently framed, prior to its amendment.

In the result, and in the light of all the foregoing, this recourse succeeds only as regards the conviction of the applicant on count 2, which is annulled, together with the sentence imposed on him in respect of it, namely the withholding of his annual increment for one year; and this recourse fails and is dismissed in every other respect. In the circumstances I will make no order as to its costs.

*Recourse succeeds in part. No order as to costs.*