

1983 February 15

[TRIANTAFYLIDIS, P., MALACHTOS, DEMETRIADES, SAVVIDES,
STYLIANIDES, PIKIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR AND/OR
THE COMMANDER OF POLICE,

Appellants,

v.

CONSTANTINOS G. MITHILLOS,

Respondent.

(Revisional Jurisdiction Appeal No. 273).

*Public Officers—Disciplinary offences—Disciplinary authorities relying
on evidence which was proclaimed by Court of Appeal as unreliable
—Disciplinary conviction and sentence annulled.*

*Rule of Law—Supremacy of—Need to maintain vigilantly observance
of the rule of Law.*

5

The respondent, a policeman, was dismissed from the force after conviction on two disciplinary offences, founded on the Police Discipline Regulations, for neglect of duty contrary to reg. 4(a) and exhibition of conduct unbecoming to a policeman, contrary to reg. 7 of the said Regulations. The disciplinary charges were interwoven with criminal proceedings which were raised against the respondent and a fellow-policeman before the Larnaca District Court. The District Court of Larnaca that took cognizance of and tried the criminal charges, convicted the respondent and sentenced him to prison on two counts involving incitement to commit an offence, contrary to s.370(b) of the Criminal Code, Cap. 154. On appeal, the Supreme Court acquitted the respondent on one of the two counts and ordered a retrial with regard to the second. The Supreme Court reversed the verdict of the trial Court because the evidence of key prosecution witnesses was found to lack credibility as it was first given after the witnesses were ill-treated in the hands of the Police and the Court could not rule out

10

15

20

the possibility that it was the product of coercion. On retrial the respondent was acquitted on the second charge as well.

5 It was common ground before the trial Court, as indeed it was acknowledged before this Court that the criminal and disciplinary proceedings rested on identical evidence.

10 Upon a recourse by the respondent, the trial Judge annulled the above punishment having held that the Police disciplinary authorities ought, in view of the findings of the criminal Court as elicited on appeal and subsequently on retrial, to have disregarded the evidence of key witnesses because of the intrinsic lack of worth of their evidence.

On Appeal by the Republic:

15 *Held*, that it is a settled principle of administrative law that the findings of fact of the criminal Court are binding upon the disciplinary tribunal provided they are positive, based on an affirmative declaration of their worth by the criminal Court and not founded on doubts of the criminal Court as to their value; that a proper application of this principle ought to have led the disciplinary authorities to disregard evidence, proclaimed 20 by a criminal Court as unreliable; that their failure to heed the aforementioned principles of law, vitiated the conviction and the sentence passed thereupon; and that, therefore, the appeal must inevitably be dismissed.

25 *Held*, further, that this Court subscribes to the view of the trial Judge as to the supremacy of the Law and the need to maintain vigilantly observance of the rule of Law.

Appeal dismissed.

Cases referred to:

Morsis v. Republic, 4 R.S.C.C. 133.

30 **Appeal.**

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Hadjianastassiou, J.) given on the 8th April, 1982 (Revisional Jurisdiction Case No. 174/76)* whereby appel-

* Reported in (1982) 3 C.L.R. 698.

lants' decision confirming the respondent's requirement to resign from the Police Force was annulled.

Gl. Hadjipetrou, for the appellants.

No appearance for the respondent.

Cur. adv. vult. 5

TRIANTAFYLIDES P.: The judgment of the Court will be delivered by Pikis, J.

PIKIS J.: The respondent, a policeman, was dismissed from the force after conviction on two disciplinary offences, founded on the Police Discipline Regulations, for neglect of duty contrary to reg. 4(a) and exhibition of conduct unbecoming to a policeman, contrary to reg. 7 of the aforesaid rule. Dismissal was one of the modes of punishment provided by reg. 18 upon conviction for either of the two offences. 10

The disciplinary charges were, as acknowledged, interwoven with criminal proceedings raised against the respondent and a fellow-policeman before the Larnaca District Court. It is unnecessary to refer to the parallel courses that the two proceedings followed, except recount the facts primarily referable to the criminal proceedings that led the learned trial Judge to annul the disciplinary convictions and consequential dismissal in proceedings under Article 146 of the Constitution. The District Court of Larnaca that took cognizance of and tried the criminal charges, convicted the respondent and sentenced him to prison on two counts involving incitement to commit an offence, contrary to s.370(b) of the Criminal Code, Cap. 154. On appeal, the Supreme Court acquitted the applicant on one of the two counts and ordered a retrial with regard to the second. The Supreme Court reversed the verdict of the trial Court because of the weight it attached to the evidence of key prosecution witnesses whose testimony ought to have been disregarded because of its dubious provenance. Their evidence was found to lack credibility because it was first given after the witnesses were ill-treated in the hands of the Police and the Court could not rule out the possibility that it was the product of coercion. On retrial the respondent was acquitted on the second charge as well. 15
20
25
30
35

It was common ground before the trial Court, as indeed it was acknowledged before us, that the criminal and discipli-

nary proceedings rested on identical evidence. The learned trial Judge, in his thoroughly reasoned judgment, made a detailed survey of the implications in law of the findings of a criminal Court on disciplinary proceedings. His conclusion
 5 was that the disciplinary tribunal ought to have heeded the findings of the criminal Court and disregard prosecution evidence for all purposes, as the Supreme Court did and, apparently the trial Court in the retrial proceedings.

The Court made extensive reference to Greek case-law and
 10 the approach of the Greek Council of State to the evaluation of the findings of the criminal Court by a disciplinary tribunal. (See, inter alia, *Conclusions from jurisprudence of the Greek Council of State 1929-59*, p. 364, also *Kyriacopoulos on Greek Administrative Law*, p. 281).

15 The Greek case-law reflects, so far as we may gather, settled principles of administrative law on the bearing of the findings of a criminal Court on disciplinary proceedings emanating from and resting on the same factual substratum. These principles received explicit approval by the Supreme Constitutional Court
 20 in *Stelios K. Morsis v. The Republic (P.S.C.)*, 4 R.S.C.C. 133.

The principles under consideration, so far as relevant to the present proceedings, are:-

- (1) The outcome of disciplinary proceedings is not necessarily
 25 dependent on the outcome of criminal proceedings, even in cases where the factual background is the same. It is acknowledged that criminal and disciplinary proceedings serve different objectives and purposes. Criminal proceedings are primarily meant to ensure obedience to the general law, whereas disciplinary proceedings
 30 are intended to safeguard observance of the internal disciplinary code. Consequently, the same evidence, although insufficient to ground a criminal conviction, may suffice to prove disciplinary charges.
- (2) The findings of fact of the criminal Court are binding
 35 upon the disciplinary tribunal provided they are positive, based on an affirmative declaration of their worth by the criminal Court and not founded on doubts of the criminal Court as to their value.

The trial Court heeded the above principles and held that the Police disciplinary authorities ought, in view of the findings of the criminal Court as elicited on appeal and subsequently on retrial, to have disregarded the evidence of key witnesses because of the intrinsic lack of worth of their evidence. In effect the learned trial Judge found that the rejection by the criminal Court of the evidence of prosecution witnesses, contained a positive declaration of the worthlessness of the testimony. Learned counsel for the Republic argued, in support of the appeal, that notwithstanding the unworthiness of prosecution evidence, there was nonetheless material upon which the disciplinary tribunal could convict the respondent on the charges he was found guilty of. We are unable to sustain his submission. The evidence to which he referred us carried the case for the appellants no further and, certainly, did not amount to an admission of guilt on the part of the respondent, of the disciplinary charges of which he was convicted. With his acknowledgment that the same factual substratum permeated both criminal and disciplinary proceedings, the premises of disciplinary conviction collapsed with the findings of the criminal Court, as they emerged on appeal and, the rejection of prosecution evidence as unworthy. It is difficult to envisage circumstances in which any use may be made of creditworthless evidence for any penal purposes. The indisputable fact is that evidence proclaimed by a criminal Court as unreliable, was relied upon by the disciplinary tribunal to support disciplinary charges. A proper application of the principles of administrative law ought to have led the disciplinary authorities to disregard such evidence and dismiss the charges. Their failure to heed the aforementioned principles of law, vitiated the conviction and the sentence passed thereupon. The appeal must inevitably be dismissed.

Before ending this judgment, we may note that the learned trial Judge gave, as a supplementary reason for the annulment of the decision, the need to sustain the supremacy of the law and safeguard the rule of law. The decisions of the Supreme Court are the most authoritative pronouncements on the law and, as such, they ought to be heeded by everyone. We subscribe to the view as to the supremacy of the law and the need to maintain vigilantly observance of the rule of law. The need to sustain the rule of law, proclaimed by the learned trial

Judge, should not be taken as in any way antagonistic to the principles of administrative law earlier referred to, particularly on the implications of the findings of a criminal Court on disciplinary proceedings and the absence of any prohibition for
5 a disciplinary tribunal to take in its deliberations facts not positively declared as uncreditworthy by the criminal Court.

In the result the appeal is dismissed. There shall be no order as to costs.

Appeal dismissed. No order as to costs.

10