

1984 October 2

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

POLICE INSPECTOR ANDREAS CHORAITIS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COUNCIL OF MINISTERS AND/OR
2. THE MINISTER OF INTERIOR AND/OR
3. THE CHIEF OF POLICE,

Respondents.

(Case No. 170/81).

Administrative Law—Administrative act or decision—Not challenged by a recourse—Any grounds regarding its invalidity, put forward in a recourse against another administrative act, are out of time

5 *Interdiction—Is not part of a composite administrative act—It is simply a step taken as a result of disciplinary action.*

Administrative Law—Administrative acts or decisions—Reasoning—Supplemented by the material in the file.

10 *Council of Ministers—Delegation of powers—Nomination of Committee consisting of four members of the Council—To submit a report to the Council—Does not amount to a delegation of powers since the final decision was reached by the Council itself as a whole.*

15 *Administrative Law—Formalities—Essential and mere formalities—Only the contravention of an essential formality renders an act liable to annulment—Dismissal of Appeal against disciplinary conviction of a Police Officer—Mere reference to the wrong regulation, under which the appeal was made, not a contravention of an essential formality leading to the annulment of the sub*
judice decision.

20 *Administrative Law—Administrative acts or decisions—Reasoning—*

Decisions of organs exercising discretionary powers—Though Court cannot interfere with the discretion of such organs once it has been exercised properly it must be in a position to exercise control as to whether the discretionary power was exercised properly—And for this reason the decision of such organs must be reasoned and proper records should be kept—Decision of Chief of Police withholding emoluments of applicant taken in exercise of discretionary powers under regulation 23(f)(iii) of the Police (Discipline) Regulations—No record of the decision kept and no reasons therefor—Sub judice decision annulled.

The applicant a Police Inspector, was on the 4th February, 1980 interdicted from duty, pending his trial on disciplinary charges; and since his interdiction he was being paid two-thirds of his salary. He was tried by the Divisional Commander and upon his conviction he was sentenced to pay a fine of £20, on the 5th August, 1980. His interdiction was terminated on 27.6.1980. He appealed against his conviction to the Council of Ministers which dismissed his appeal on the 2nd February, 1981. Thereafter the Chief of Police in exercise of his powers under regulation 23(f)(iii) of the Police (Discipline) Regulations, decided that the emoluments of the applicant for the period of his interdiction 4.2.1980—27.6.1980 be forfeited. Hence this recourse which was directed both against the dismissal of his appeal and against the forfeiture of his emoluments.

Counsel for the applicant mainly contended:

- (a) That the respondents acted contrary to regulation 23 in that the approval of the Chief of Police and the confirmation of the Council of Ministers are both required for the interdiction of an Inspector, whilst in the present case the interdiction was effected by the Divisional Commander without the previous approval of the Chief of Police and the required confirmation was not given by the Council of Ministers but by the Minister of Interior.
- (b) That the sub judice decision of the Council of Ministers was not reasoned.
- (c) That the Council of Ministers was not entitled to delegate its powers regarding the appeal to another

organ, that is a Committee of Ministers as the act was of a judicial and not administrative or executory nature.

- 5 (d) That the sub judge decision of the Council of Ministers was void because it makes references to regulation 38 whilst applicant's appeal was made in accordance with regulation 20(2) of the Police (Discipline) Regulations.
- 10 (e) That the withholding of the emoluments was another form of punishment additional to the one imposed by the Disciplinary organ and should be compatible with the one imposed.

15 *Held*, (1) that since no recourse was made by the applicant against his interdiction at the appropriate time any grounds that may possibly be raised now regarding the validity of his interdiction are obviously, out of time; and that, further, the interdiction is not part of a composite administrative act so that it may merge in the final act and be challenged together with it since it does not form part of the disciplinary process as such but it is simply a step taken, as a result of disciplinary
20 action, against the applicant.

(2) That though no reasons are given in the sub judge decision of the Council of Ministers, the reasoning of a decision may be supplemented or appear in the file of the case and that the reasons which appear in the file of this case afford an adequate
25 reasoning to the sub judge decision.

(3) That what the Council in fact did was to nominate a Committee, consisting of four of its members, to go through the whole matter and submit their report with their findings to the Council, which would then sit, in its full composition and decide
30 upon the matter; that this does not amount to a delegation of powers since the final decision was reached by the Council itself, as a whole.

(4) That in substance there is no difference between regulation 20(2) and regulation 38, except that they refer to different ranks
35 of officers; that only the contravention of an essential formality renders an act liable to annulment; that, as a general rule, formalities set up by circulars or other administrative regulations are not essential but mere formalities; that even if the Coun-

oil of Ministers was labouring under the wrong impression that the applicant was a "senior officer" within the meaning of the Regulations, this has no bearing on its decision to dismiss the appeal, since its task, sitting as a Court of appeal, was to consider the legality and reasonableness of the decision appealed from, which it did; and that, therefore, the mere reference to the wrong regulation under which the appeal was made was not, in the circumstances of the present case, a contravention of an essential formality leading to the annulment of the sub judice act or decision.

(5) That the phrase "unless the Chief of Police directs that he shall not receive the said pay and allowances" in regulations 23(f)(iii) denotes an exercise of discretion; that this Court cannot interfere with the discretion of administrative organs once such discretion has been exercised properly; that the Court, however, must be in a position to exercise control as to whether the discretionary power was exercised properly and for this reason, the decision of an organ exercising discretionary powers must be duly reasoned and proper records should be kept for the purpose of enabling the Court to exercise such control; that in the present case no written record has been kept and there is no evidence at all showing what the Chief of Police took into account in the exercise of his discretion; that, furthermore, no reasons at all are given, nor they can be inferred from the file as to how and on what considerations he decided to withhold the emoluments of the applicant, which were deducted during the period of his interdiction; that in the absence of proper records this Court is not in a position to exercise any control at all as to whether the discretion of the Chief of Police was properly exercised; and that, accordingly, the part of the recourse, which is directed against the forfeiture of applicant's emoluments, must succeed.

Recourse successful in part.

Cases referred to:

Payiatis v. Republic (1984) 3 C.L.R. 165 at p. 192;

Vassos Eliades Ltd. v. Republic (1976) 3 C.L.R. 293;

Korai and Another v. C.B.C. (1973) 3 C.L.R. 546;

Sevastides v. Republic (1968) 3 C.L.R. 309;

Christou v. Republic (1980) 3 C.L.R. 437 at p. 448;

Georgiades v. Republic (1980) 3 C.L.R. 486 at p. 490;

Bagdades v. Central Bank (1973) 3 C.L.R. 417.

Recourse.

Recourse against the decision of the respondents to impose upon applicant the disciplinary punishment of £20.— for the disciplinary offences of neglect of duty and disobedience to orders and against the dismissal, by the Council of Ministers, of his appeal against his conviction.

I. Typographos, for the applicant.

M. Florentzos, Senior Counsel of the Republic, for the respondents.

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Cur. adv. vult.

SAVVIDES J. read the following judgment. Applicant has been serving in the Police Force for 28 years and since 1974 he is holding the rank of a Police Inspector. On the 3rd February, 1980, whilst the applicant was the officer in charge of the shift work at the Limassol Police Station, a detainee in the lock-ups of the Limassol Police Station escaped from custody. The applicant was considered responsible for such escape and a disciplinary charge was brought against him by the Limassol Divisional Police Commander accusing him of—

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(1) neglect of duty and

(2) disobedience to orders under the Police Regulations.

In view of the seriousness of the charge the applicant was interdicted as from the 4th February, 1980 and since his interdiction he was being paid two-thirds of his salary.

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The Divisional Police Commander in the exercise of his powers under regulation 14(1) conducted the disciplinary proceedings and found the applicant guilty of the offences of which he was charged and imposed on him on 5.8.1980, a sentence of £20.— fine. His interdiction was in the meantime terminated on 27.6.1980.

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The applicant appealed against his conviction to the Council of Ministers under the provisions of regulation 20(2). The Council of Ministers considered the appeal and decided to dismiss same. The decision of the Council of Ministers, No. 19.937 was given on 2.2.1981. The Minister of Interior informed the Chief of Police of the decision of the Council of Ministers who, in his turn, informed the applicant accordingly

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by letter dated 28th February, 1981 the contents of which read as follows:

“Appeal to the Council of Ministers for disciplinary case, Limassol 1/80.

I refer to your application to the Council of Ministers 5
appealing against your conviction in the above disciplinary
case and I wish to inform you that the Council of Ministers
having examined your appeal decided (Decision No.
19.937 dated 29.1.1981, 30.1.1981 and 2.2.1981) to dismiss
same”. 10

The Chief of Police in the exercise of his powers under Regu-
lation 23(f)(iii) of the Police (Discipline) Regulations, decided
that the emoluments of the applicant for the period of his
interdiction 4.2.1980–27.6.1980 be forfeited and the applicant
was informed accordingly. 15

As a result, the applicant filed the present recourse directed
against the Council of Ministers (respondent 1) the Minister of
Interior (respondent 2) and the Chief of Police (respondent 3)
whereby he prays for—

- (a) a declaration of the Court that the act and/or decision 20
of the respondents to impose upon the applicant the
disciplinary punishment of £20.– fine and/or dismiss
his appeal against his conviction is unlawful, void
and of no legal effect.
- (b) A declaration of the Court that the act and/or decision 25
of the respondents to forfeit the emoluments deducted
during the period of his interdiction is null, unlawful
and of no legal effect whatsoever.

The grounds of law on which this recourse is based, as set
out in the application, are the following: 30

- (1) The respondents acted arbitrarily and in violation of the
Police (Discipline) Regulations of 1958.
- (2) The sub judice acts and/or decisions are not properly
and/or legally reasoned and/or they are lacking real and
due reasoning. 35
- (3) The respondents did not weigh nor did they examine

properly and legally the real facts and/or they failed to give due weight to the evidence adduced.

- 5 (4) Furthermore, the applicant alleges that the respondents relied on untrue facts and/or evidence without carrying out a detailed and proper inquiry which was required due to the nature of the case, and the evidence adduced did not support his conviction.
- 10 (5) The sub judge decision and/or act of the applicants to forfeit the emoluments which were withheld during the period of his interdiction is unlawful in that it contravened regulation 23 of the Police (Discipline) Regulations 1958.
- 15 (6) The respondents in taking the sub judge decisions acted in abuse and/or excess of powers in that they have acted ultra vires and contrary to the principles of natural justice.

The respondents by their opposition supported the sub judge acts and/or decisions and contend that such decisions are duly reasoned and were properly and legally taken according to the provisions of the Constitution and the relevant Laws and
20 Regulations, after the proper exercise of their powers and after having taken into consideration all material facts, evidence and circumstances of the case.

Counsel for applicant has argued in his written address that the respondents acted contrary to regulation 23 in that the
25 approval of the Chief of Police and the confirmation of the Council of Ministers are both required for the interdiction of an Inspector, whilst in the present case the interdiction was effected by the Divisional Commander without the previous approval of the Chief of Police and the required confirmation
30 was not given by the Council of Ministers but by the Minister of Interior.

Counsel for the respondent argued with regard to the same point, that it is not necessary that the approval of the Chief of Police be given before the interdiction, but that such approval
35 may be given subsequently and that the letter of the Chief of Police dated 5.2.1980 provides such approval. Counsel further submitted that the Council of Ministers had power, under Law 23/62, to delegate its administrative or executive powers or

duties to the Minister concerned, by a decision to this effect, and that the Council of Ministers had by its decision No. 768/61, dated 11.5.1961, delegated its powers of interdiction under regulation 23(c) to the Minister of Interior.

At this stage I wish to observe that the validity of the interdiction as such is not challenged by this recourse which turns against the decision of the respondents by which applicant was found guilty of certain disciplinary offences and sentenced to a fine of £20 and the dismissal of his appeal by the Council of Ministers, and(b) against the decision to withhold part of his emoluments (one-third) deducted from his salary and detained during the period of his interdiction.

No recourse was made by the applicant against his interdiction at the appropriate time and any grounds that may possibly be raised now regarding the validity of his interdiction are, obviously, out of time.

Further, the interdiction is not part of a composite administrative act so that it may merge in the final act and be challenged together with it since it does not form part of the disciplinary process as such but it is simply a step taken, as a result of disciplinary action, against the applicant (see the case of *Payiatas v. Republic* (1984) 3 C.L.R. 165 at p. 192 and the cases cited therein).

This ground of law is, therefore, dismissed as non-entertainable by this recourse.

The next ground argued by counsel for applicant is that of the reasoning of the sub judge decision of the Council of Ministers. Counsel for applicant contended that the minutes of the meetings of the Council of Ministers at which the sub judge decision was taken are very vague and do not contain any reasoning and the Court is not therefore in a position to exercise control on such decision. Further, counsel argued that the sub judge decision of the Council of Ministers is void also for the reason that it makes reference to regulation 38 whilst applicant's appeal was made in accordance with regulation 20(2) of the Police (Discipline) Regulations. This according to counsel's submission, amounts to the wrong reference to a real fact or the invocation of the wrong law which justifies

the annulment of the sub judice decision. Counsel also contended that the Council of Ministers was not entitled to delegate its powers regarding the appeal to another organ, that is a Committee of Ministers, as the act was of a judicial and not
5 administrative or exccutory nature.

I shall deal with the last argument first. In this respect, it must be observed that the Council of Ministers did not delegate its power to hear the appeal to the Committee of Ministers. The minutes of the meeting at which the alleged delegation took
10 place, dated 27.11.1980, read as follows:

“19. It was agreed that a Committee, consisting of the Ministers of Interior, Labour and Social Insurance, Justice and Agriculture and Natural Resources, studies the matter and submits Report to the Council”.

15 It is obvious from the wording of the minutes that what the Council in fact did was to nominate a Committee, consisting of four of its members, to go through the whole matter and submit their report with their findings to the Council, which would then sit, in its full composition and decide upon the matter.
20 This in my view does not amount to a delegation of powers since the final decision was reached by the Council itself, as a whole. The fact that certain of its members may appear to have a more detailed picture of the whole situation, since they had conducted an inquiry into the matter, cannot change the
25 situation once the result of such inquiry was put before the Council and it was open to any of its members either to question them or ask for any further explanation or details. Besides, what was done by the Committee of Ministers, is part of the internal procedure of the Council and does not affect its final
30 decision, which was reached by the Council itself in its proper composition. (The report of the Committee of Ministers is to be found at red 31 in the file of the applicant which was produced as an exhibit and the final decision of the Council of Ministers appears in red 34).

35 I come now to consider th reasoning of the decision of the Council of Ministers. The sub judice decision (red 34) reads as follows:

“16. The Council considered the appeal, attached to the

submission as Appendix I, submitted on the basis of Regulation 38 of the Police (Discipline) Regulations 1958-1978, on the part of Inspector Andreas Choraitis, who was sentenced by a Disciplinary Committee to £20 fine and decided to dismiss the said appeal".

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It is true that no reasons are given in the above decision as to why the appeal was dismissed. Nevertheless, it has been held by our Courts in a series of cases that the reasoning of a decision may be supplemented or appear in the file of the case. (see, the cases of *Vassos Eliades Ltd. v. Republic* (1976) 3 C.L.R. 293, *Korai & Another v. C.B.C.* (1973) 3 C.L.R. 546, *Sevastides v. Republic* (1968) 3 C.L.R. 309). In this respect, I wish to make reference to the submission to the Council of Ministers (red 27 in the file) to which the file of the proceedings of the Disciplinary Committee was attached, and also the report of the Committee of Ministers to the Council (red 33) where reference is made to several material facts arising from the evidence adduced during the hearing of the case, leading to the reasons why applicant was found guilty of the offences charged with. These reasons afford, in my view, an adequate reasoning to the sub judice decision of the Council.

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As it transpires from the file of the proceedings, the Council of Ministers reached its decision after having duly taken into consideration all relevant material available to it and after having conducted a proper inquiry into the case and its decision was reasonably open to it. This Court is not therefore in a position to substitute its own discretion to that of the Council of Ministers or to interfere with the sentence imposed. This part of the argument of counsel is, therefore, dismissed.

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The second leg of this ground (of reasoning) concerns the reference to regulation 38 instead of 20(2) by the Council of Ministers in its sub judice decision. The citation of the same Regulation appears also in the submission to the Council of Ministers (red 27) in the file. In the notice of appeal signed by the applicant the Regulation relied upon is regulation 20 which is the correct one, since an Inspector is not considered to fall within the definition of a Senior Officer (Ανώτερος Αξιωματικός) as set out in regulation 2 of the regulations as amended by the Police (Discipline) Regulations of 1976 and

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for whom a special procedure is set up in cases of disciplinary proceedings due to their higher rank. The procedure is very similar to the one set out in the original Regulations which is to be followed in cases of proceedings against officers below the rank of Superintendent B. An Inspector is below the rank of Superintendent B so the Regulations applicable in his case are regulations 8–23, both inclusive and in case where he is aggrieved by any decision on disciplinary matter he may appeal, within 7 days, to the Council of Ministers the decision of which is to be final (regulation 20(2)). An officer above the rank of Superintendent B, may appeal under regulation 38, within 7 days to the Council of Ministers, the decision of which is, again, final. There is, therefore, in substance, no difference between the two Regulations, except that they refer to different ranks of officers. The procedure and final effect is in both cases the same.

In Stassinopoulos “Law of Administrative Acts” (1951 Ed.) it is stated at page 227 that formalities must be classified as essential and mere formalities, and that only the contravention of an essential formality renders an act liable to annulment. At the following page the author tries to make a distinction between the two classes of formalities. As he states, it is not always easy to draw the line, but as a general rule, formalities set up by circulars or other administrative regulations are not essential, whilst those introduced by law are so treated. He finally concludes at pp. 228, 229 that the Judges before deciding as to whether a formality is a mere one or an essential one, should consider its importance and the effect that its omission has upon the compliance of the administration with the law. Lastly, he mentions, at page 229, that the non-compliance with the same formality may not always lead to the annulment of the act, but only when, having regard to the special circumstances, such non-compliance really affects the guarantees set up for the legality of the act.

In the case of *Christou v. Republic* (1980) 3 C.L.R. 437 at p. 448, it was held that only material irregularity can be relied on as a ground for annulment of the relevant administrative action.

In the present case it is my view that even if the Council of

Ministers was labouring under the wrong impression that the applicant was a "senior officer" within the meaning of the Regulations, this has no bearing on its decision to dismiss the appeal, since its task, sitting as a Court of appeal, was to consider the legality and reasonableness of the decision appealed from, which it did. In the circumstances, I cannot really see in what way the result of such decision might have been affected if the Council of Ministers did not refer to regulation 38 but to regulation 20(2) since what it had to consider was the correctness of the decision before it. It must also be borne in mind that the reference to the wrong Regulation does not at all affect the reasoning of the decision. The Council of Ministers did not rely on it to issue its decision. It was only a formal reference to the Regulation under which the appeal was made and it does not at all form part of the reasoning of the decision.

For the above reasons I find that the mere reference to the wrong Regulation under which the appeal was made was not, in the circumstances of the present case, a contravention of an essential formality leading to the annulment of the sub judice act or decision. In the result, this ground fails.

Having dealt with part A of the prayer, I am now coming to examine part B, that is, whether the decision to withhold applicant's emoluments was validly taken. Counsel has argued that the withholding of the emoluments is another form of punishment, additional to the one imposed by the Disciplinary organ and should be compatible with the one imposed. That since the fine imposed to the applicant was that of £20, the withholding of the whole sum of his emoluments deducted during the period of his interdiction, amounting to £600 is disproportionate to the fine of £20, and totally unreasonable, in the circumstances.

Regulation 23(f) which makes provision about the said matter reads as follows:

"(f) any such member, who having been interdicted from duty, returns to duty shall receive, as from the date of his interdiction, the pay and allowances to which he would have been entitled by virtue of the Police (General) Regulations, 1958, or any regulations amending or substituted

for the same made under the Police Law, 1958, and then in force, but for his interdiction from duty, if—

(i) _____

(ii) _____

5 (iii) he has been punished by withholding, stoppage or deferment of increment, a fine not exceeding ten days' pay, severe reprimand, reprimand or admonition, unless the Chief of Police directs that he shall not receive the said pay and allowances;"

10 The phrase "unless the Chief of Police directs that he shall not receive the said pay and allowances" denotes an exercise of discretion. It has been said, time and again, that this Court cannot interfere with the discretion of administrative organs once such discretion has been exercised properly. The Court, however, must be in a position to exercise control as to whether the discretionary power was exercised properly. And for this
15 reason, the decision of an organ exercising discretionary powers must be duly reasoned and proper records should be kept for the purpose of enabling the Court to exercise such control.

20 In the present case no written record has been kept and there is no evidence at all showing what the Chief of Police took into account in the exercise of his discretion. Furthermore, no reasons at all are given, nor they can be inferred from the file as to how and on what considerations he decided to withhold the emoluments of the applicant, which were deducted during the period of his interdiction. In the absence of proper records
25 this Court is not in a position to exercise any control at all as to whether the discretion of the Chief of Police was properly exercised. (See *Georghiades v. Republic* (1980) 3 C.L.R. 486, 490, *Bagdades v. Central Bank* (1973) 3 C.L.R. 417).

30 Therefore, in the absence of such reasoning, this part of the recourse succeeds.

In the result, this recourse succeeds partly, and the decision of the Chief of Police to withhold the part of the emoluments

deducted during the period of his interdiction, amounting to about £600, is hereby annulled for lack of any reasoning.

In the circumstances of the case and as the recourse succeeds only partly, I make no order for costs.

Sub judice decision partly annulled. No order as to costs.

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