

1983 October 22

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DAMIANOS DAMIANOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE MINISTER OF INTERIOR,

2. THE CHIEF OF POLICE,

*Respondents.*

(Case No. 29/77).

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*Natural justice—Police constable—Disciplinary punishment—Increase of, by Divisional Police Commander following review of case—Applicant present and given the opportunity to be heard, and actually heard, at the review proceedings—Rules of natural justice not violated—No need to warn applicant that review could entail increase of the punishment because such eventuality is expressly envisaged by regulation 18(4)(b) of the Police (Discipline) Regulations, 1958—And presumed that applicant, being a policeman, was duly aware of the provisions of the said regulation.* 5

*Administrative Law—Administrative acts or decisions—Reasoning—May be found in, or supplemented by, the relevant administrative record.* 10

*Disciplinary Offences—Disciplinary punishment—Judicial control—Principles applicable.*

The applicant, a police constable, was tried disciplinarily and a sentence of fine was imposed on him. Thereafter the Nicosia Divisional Police Commander reviewed the case and, after hearing the applicant, he proceeded to impose on him the punishment of dismissal from the police. The appeal of the applicant against the latter decision to the Chief of Police was dismissed; and hence this recourse. 15 20

*Counsel for the applicant mainly contended:*

- 5 (a) That as applicant was not represented by counsel at the review of his case before the Nicosia Divisional Police Commander, and as he had not been warned that such review could entail increase of the disciplinary punishments which had been initially imposed on him, the rules of natural justice have been violated.
- 10 (b) That the decision on review, which was confirmed on appeal by the Deputy Chief of Police, was not duly reasoned.
- (c) That the punishment was excessive.

15 *Held*, (1) that as the applicant was present and was given the opportunity to be heard, and was actually heard, during the review proceedings the rules of natural justice have not been violated; that, further, the eventuality that review might entail increase of the punishment initially imposed on applicant is expressly envisaged by regulation 18(4)(b) of the Police (Discipline) Regulations, 1958, and it has to be presumed that the applicant, being a policeman, was duly aware of the provisions of the said regulation.

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(2) That the reasons for an administrative decision may be found in, or supplemented by, the relevant administrative documents and, particularly, the facts of this case as they appear from the record of the first instance disciplinary trial, indicate fully the reasons for the decision which was reached on review.

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(3) That it is not possible to interfere with the punishment which was imposed on the applicant, by means of an administrative recourse such as the present one, merely on the ground that it is severe.

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*Application dismissed.*

Cases referred to:

- Orphanides v. Republic* (1968) 3 C.L.R. 385;
- Oryctako Ltd. v. Republic* (1981) 3 C.L.R. 174 at p. 184;
- Sofocleous v. Republic* (1982) 3 C.L.R. 786 at pp. 796, 797;
- 35 *Petrides v. Republic* (1983) 3 C.L.R. 216 at p. 220;

*Christofides v. C.Y.T.A.* (1979) 3 C.L.R. 99 at pp. 125, 126;

*Shakallis v. Republic* (1981) 3 C.L.R. 440 at pp. 448, 449.

### Recourse.

Recourse against the decision of the respondents confirming the decision of the Nicosia Divisional Police Commander whereby applicant was dismissed from the Police Force by way of disciplinary punishment. 5

*A.S. Angelides*, for the applicant.

*G. Constantinou (Miss)*, Counsel of the Republic, for the respondents. 10

*Cur. adv. vult.*

TRIANTAFYLIDIS P. read the following judgment. By the present recourse the applicant challenges, in effect, the decision of the Deputy Chief of Police, which was communicated to him on the 11th November 1976 and by means of which there was confirmed the decision of the Nicosia Divisional Police Commander to dismiss him from the police by way of disciplinary punishment. 15

The applicant was charged with the commission of the disciplinary offence of discreditable conduct (because he had been found gambling in a coffee shop), of neglect of duty (because while he was on duty he had left his place of work without due permission or sufficient cause) and of disobedience to orders (because while being on duty he was found in a coffee shop dressed in civilian clothes). 20 25

The applicant admitted, eventually, the commission of the first of the aforesaid offences and at the conclusion of the disciplinary proceedings, which took place before a Chief Inspector of Police, and during which the applicant had the benefit of the services of counsel, he was found guilty of the second offence, too, and was discharged in respect of the third offence. He was ordered to pay a fine of £15 as regards the first offence and a fine of £5 as regards the second offence. 30

He has been, also, criminally prosecuted in relation to the commission of the first offence and a fine of £10 was imposed on him by the District Court of Nicosia. 35

Then, the Nicosia Divisional Police Commander reviewed the case and, after hearing the applicant, he proceeded to impose on him the punishment of dismissal from the police as regards the first offence and he reprimanded the applicant as regards  
5 the second offence.

The applicant appealed to the Chief of Police and his appeal, which was dealt with by the Deputy Chief of Police affording to both the applicant and his counsel an opportunity to be heard, was dismissed on the ground that the punishment that  
10 was imposed on him was found to be correct.

It has been argued by counsel for the applicant that as he was not represented by counsel at the review of his case before the Nicosia Divisional Police Commander, and as he had not been warned that such review could entail increase of the disciplinary punishments which had been initially imposed on him,  
15 the rules of natural justice have been violated.

I am of the opinion that as the applicant was present and was given the opportunity to be heard, and was actually heard, during the review proceedings the rules of natural justice have not been violated. This view of mine is strengthened by the  
20 fact that the applicant was well aware of the date and time which had been fixed for the review of his case and he could have arranged for counsel to appear then on his behalf. In any event he was, subsequently, represented by counsel when  
25 his appeal from the decision on review was heard.

In the case of *Orphanides v. The Republic*, (1968) 3 C.L.R. 385, which has been relied on by counsel for the applicant it was held that the rules of natural justice are also applicable to review proceedings and that the reviewing officer's decision  
30 was invalid as the review had taken place in the absence of the applicant and without his having been given an opportunity to be heard. It is, however, obvious, in the light of all relevant circumstances, that the present case is distinguishable from the *Orphanides* case.

35 Regarding the contention that the applicant should have been warned that the review might entail increase of the punishment initially imposed on him, it is useful to bear in mind that such an eventuality is expressly envisaged by regulation 18(4)(b)

of the Police (Discipline) Regulations, 1958, and it has to be presumed that the applicant, being a policeman, was duly aware of the provisions of the said regulation.

It has been submitted, further, on behalf of the applicant, that the decision on review, which was confirmed on appeal by the Deputy Chief of Police, was not duly reasoned. 5

It is well settled, however, that the reasons for an administrative decision may be found in, or supplemented by, the relevant administrative records (see, inter alia, in this respect, *Oryctako Ltd. v. The Republic*, (1981) 3 C.L.R. 174, 184, *Sofocleous v. The Republic*, (1982) 3 C.L.R. 786, 796, 797 and *Petrides v. The Republic*, (1983) 3 C.L.R. 216, 220). 10

In the present case the relevant administrative documents and, particularly, the facts of this case as they appear from the record of the first instance disciplinary trial, indicate fully the reasons for the decision which was reached on review. It is noteworthy, indeed, that the Chief Inspector of Police before whom the disciplinary trial took place pointed out that the applicant had been found guilty of disciplinary offences on many occasions in the past; and that, in the circumstances, it was with great hesitation on the part of the said Chief Inspector that a punishment lesser than dismissal from the police was imposed on the applicant. 15 20

Furthermore, I find no merit in the contention of counsel for the applicant that extraneous considerations were taken into account in reaching the decision on review to dismiss him from the police or in confirming such decision on appeal. All the factors that appear to have been taken into account were pertinent, indeed, matters, since they related to the facts of the case and the career of the applicant in the police, as shown by his personal file. 25 30

Lastly, as regards the nature of the punishment which was imposed on the applicant it is not possible to interfere with it, by means of an administrative recourse such as the present one, merely on the ground that it is severe (see, in this respect, *Christofides v. Cyprus Telecommunications Authority*, (1979) 3 C.L.R. 99, 125, 126 and *Shiakallis v. The Republic*, (1981) 3 C.L.R. 440, 448, 449). 35

In the result this recourse fails and has to be dismissed;  
but I shall not make any order as to its costs.

*Recourse dismissed with no order  
as to costs.*