1984 August 9

[L. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

EVANGELOS PETROU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Case No.* 469/80).

Administrative Law—Administrative acts or decisions—Reasoning—Council of Ministers dismissing applicant's appeal against decision of the Minister of Interior—Annulment of decision of the Council by the Supreme Court and reconsideration of the matter by the Council—Decision of the Minister vulnerable on the ground that he wrongly took into consideration a disciplinary offence for which applicant was never tried or convicted—In reconsidering the matter Council of Ministers not stating in their decision, dismissing the appeal, that they either disregarded or excluded from consideration the above offending part in the Minister's decision or that, notwithstanding that, they were still of the view that the appeal should be dismissed—Reasoning for the decision, therefore, rendered vague and the gap is not bridged from the material in the file of the case—Moreover no one specific reason can be discerned from the decision why the appeal was dismissed—Presumption of regularity cannot be invoked—Sub judice decision not duly reasoned and is, therefore, contrary to the principles of administrative law—Annulled.

In 1977, the applicant, a Police Inspector, was charged with the disciplinary offence of disobedience to orders. He was tried by a disciplinary committee which found him guilty of the offence, on his own plea, and imposed on him, on 1st December, 1977, the punishment of dismissal from the ranks of the police force. He appealed to the Minister of the Interior, in accordance with

regulation 36 of the Police (Discipline) Regulations, who upheld the decision of the disciplinary committee on the 7th March, 1978. Applicant then appealed from the decision of the Minister to the Council of Ministers under the provisions of regulation 38. The Council by its decision of the 17th May, 1978, dismissed applicant's appeal and confirmed the decision of the Minister. The applicant next filed recourse No. 272/78, against the above decision of the Council of Ministers. The recourse was heard and judgment was given on the 10th April, 1980, allowing the recourse on the ground of violation of the rules of natural justice in that the Council did not give the applicant the right to be heard.

Following the annulment of the decision of the Council of Ministers, Counsel of the Republic appearing in that case informed the Director-General of the Ministry of Interior of the outcome of the case and advised him that the Supreme Court had annulled partly the decision of appellant's dismissal i.e. the decision of the Council of Ministers, and that the issue which had to be re-examined was only the decision of the Council of Ministers and not the decisions preceding it and also that in accordance with the judgment of the Supreme Court before re-examining the case the applicant should be given the right to be heard. Thereafter the Minister of Interior asked applicant to submit in writing, if he so wished, his representations in support of his grounds of appeal so that they might be transmitted to the Council of Ministers. In response applicant addressed, through his counsel a letter to the Council of Ministers in which he, inter alia, raised the point "that the Minister of the Interior erred in his judgment in that he took into consideration a case against the applicant which was finally not proceeded with and, therefore, he is presumed to be innocent until his guilt is proved".

The matter was then submitted to the Council of Ministers by means of a submission of the Ministry of Interior but no reference was made in such submission to the decision of the Minister nor was it appended to the submission. The Council of Ministers dismissed the appeal and hence this recourse.

Held, (1) that the Minister could not legitimately take into consideration a disciplinary case against the applicant which was finally not proceeded with because every person charged with an offence is presumed innocent until his guilt is proved before a

competent tribunal; accordingly the decision of the Minister was vulnerable on this ground.

(2) That what the Council had to do when re-examining the matter was to consider the validity or otherwise of the decision of the Minister against which the appeal before it was made by the applicant in the light of his representations, as that was the only issue before them; that, it, also, logically follows that in order to consider the representations of the applicant the Council had to examine the decision of the Minister against which they were directed; that although in the decision of the Council it is stated in general terms that they examined the whole case and did take into consideration applicant's representations, nowhere is it stated nor can it be deduced that in reaching their decision to dismiss the appeal they have, at least, either disregarded or excluded from consideration the above offending part in the Minister's decision, or that, notwithstanding that, they were, nevertheless, still of the view that the appeal should be dismissed; that this fact alone renders the reasoning incomplete or, to say the least, vague and the gap is not bridged from material contained in any of the documents relevant to this case nor does the presumption of regularity which is applicable in relation to administrative acts can, properly, be invoked in the circumstances of this case; that no one specific reason can be discerned as to why the appeal was dismissed; that, therefore, the sub judice decision is not duly reasoned and it is contrary to the principles of administrative law; and that, accordingly it must be annulled.

Sub judice decision annulled.

Cases referred to:

Menelaou v. Republic (1980) 3 C.L.R. 467 at p. 484;

HadjiVassiliou and Others v. Republic (1974) 3 C.L.R. 130;

Ierides v. Republic (1976) 3 C.L.R. 9 and on appeal (1980) 3 C.L.R. 165;

Zavros v. Republic (1969) 3 C.L.R. 310;

Demosthenous v. Republic (1973) 3 C.L.R. 354;

Pancyprian Federation of Labour (P.E.O.) v. The Board of Cinematograph Film Cencors and Another (1965) 3 C.L.R. 27;

Eleftheriou and Others v. Republic (1980) 3 C.L.R. 85 at p. 98.

Recourse.

Recourse against the dismissal by the respondent of applicant's appeal, against the decision of the Minister of Interior confirming the sentence of applicant's dismissal from the ranks of the Police Force.

L. N. Clerides, for the applicant.

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

Cur. adv. vult.

L. Loizou J. read the following judgment. The applicant by this recourse seeks a declaration that the decision of the Council of Ministers communicated to him by letter dated 3rd October, 1980, by which they decided to dismiss his appeal be declared void and of no effect whatsoever.

The facts of the case are as follows:

The applicant joined the police force in 1955 and since 1974 he was holding the rank of Inspector.

In 1977 he was charged with the disciplinary offence of disobedience to orders in that on the 4th and 5th August, 1977, whilst on duty, he did not wear a black arm-band, in disobedience to an order of the Chief of Police which was issued on the occasion of the death of the late President of the Republic Archbishop Makarios, on the 3rd August, 1977.

Applicant was tried by a disciplinary committee which found him guilty of the offence, on his own plea, and imposed on him, on 1st December, 1977, the punishment of dismissal from the ranks of the police force. He appealed to the Minister of the Interior, in accordance with regulation 36 of the Police (Discipline) Regulations, who upheld the decision of the disciplinary committee on the 7th March, 1978. Applicant then appealed from the decision of the Minister to the Council of Ministers under the provisions of regulation 38. The Council by its decision of the 17th May, 1978, dismissed applicant's appeal and confirmed the decision of the Minister. The applicant next filed recourse No. 272/78, against the above decision of the Council of Ministers. The recourse was heard and judgment was given on the 10th April, 1980, allowing the recourse on the ground of violation of the rules of natural justice in that the Council did not give the applicant the right to be heard. The

judgment in the above recourse is reported in (1980) 3 C.L.R. 203 and it concludes, at p. 218, as follows:

> "The net result is that in the present case there is a violation of the rules of natural justice and so the decision of the Council of Ministers complained of should be, and it is hereby, declared null and void. It is up to the Council of Ministers to reconsider its decision in the light of this judgment."

On the same day Counsel of the Republic, who was appearing in that case, wrote a letter to the Director-General of the Ministry of the Interior (exhibit 3) in which he stated the following:

> "With reference to the above recourse I inform you that the Supreme Court delivered today its reserved judgment a copy of which I enclose.
>
> By its judgment the Supreme Court annulled partly the decision for applicant's dismissal that is it annulled only the decision of the Council of Ministers and, therefore, the issue which has to be examined is only the decision of the Council of Ministers and not the decisions preceding it. (See decision 2427/1966 of the Council of State and Conclusions from the Case Law of the Greek Council of State 1929-1959 at p. 280).
>
> The re-examination must be effected in the light of the judgment of the Supreme Court in accordance with which the Council of Ministers is required before re-examining the case, to give the applicant the right to be heard, i.e. to set out in full detail his views but not necessarily viva voce."

On the 10th May, 1980, the Minister of the Interior wrote a letter to the applicant (exhibit 10) informing him that the Council intended to re-examine his appeal in one of its coming meetings and asking him to submit in writing, if he so wished, within fifteen days, his representations in support of his grounds of appeal, to the Director-General of the Ministry of the Interior so that they might be transmitted to the Council of Ministers.

In response to the above letter the applicant on the 20th June, 1980, addressed through his counsel a letter to the Council setting out his representations (exhibit 4). In this letter counsel for applicant raised the following points:

(i) That the Council merely confirmed the decision of the Ministers.

(ii) That the Minister of the Interior erred in his judgment in that he took into consideration a case against the applicant which was finally not proceeded with and, therefore, he is presumed to be innocent until his guilt is proved.

(iii) That since the Minister of the Interior in the reasoning of his judgment came to the conclusion that the offence of the applicant appeared, on the face of it, to be rather trivial the sentence of dismissal from the ranks of the police force and especially from the rank of Inspector imposed on him was disproportionate to the offence committed by him.

(iv) That the Minister did not take into consideration the facts in mitigation of sentence i.e. the long service of the applicant; the fact that he fought bravely against the Turks at Ayios Sozomenos and was seriously injured with a resulting 10% incapacity; that at the time of the Turkish invasion he fought bravely against the Turkish invaders; and that he is the only supporter of his family consisting of a wife and two minor children.

On the 13th July, 1980, a submission was prepared in the Ministry of the Interior to the Council of Ministers (exhibit 5). There were attached to it the letter of Counsel of the Republic (exhibit 3), the judgment of the Court referred to above, the letter of the Minister requesting applicant to submit his representations (exhibit 10) and the letter of counsel for the applicant containing such representations.

The Council considered the appeal of the applicant at its meeting held on the 28th August, 1980, and decided to dismiss it (exhibit 6). Applicant was informed accordingly by the letter exhibit 1 dated 3rd October, 1980, and as a result he filed the present recourse.

The grounds of law upon which the recourse is based are the following:

(a) That the decision of the Council of Ministers is not

duly reasoned as clearly provided by Article 29 of the Constitution.

(b) That the submission to the Council of Ministers made by the Minister of the Interior was partial in that it did not stress sufficiently the mitigating circumstances and other facts which were in favour of the applicant and the contentions of his counsel.

(c) That the decision of the Council of Ministers was reached without a due inquiry.

(d) That the Council of Ministers exercised its power under a misconception of facts and on wrong criteria.

(e) That the decision of the Council of Ministers should be annulled because the Minister of the Interior took part in the proceedings.

(f) That the decision of the Council of Ministers was taken in contravention of the judgment of the Suprme Court in case No. 272/80.

During the hearing of the case counsel for the applicant limited his arguments on three basic ground of law; that the decision of the Council is not duly reasoned; that the Minister improperly participated in the proceedings of the Council by introducing the subject; that the Council was misled in taking its decision by the letter/advice of counsel of the Republic.

In arguing his first ground, that of reasoning, counsel for applicant submitted that the Council did not give any reasons at all why it dismissed the appeal of the applicant and that due reasoning is an absolute necessity in a case of disciplinary proceedings. He maintained further that since the applicant has raised certain grounds in his appeal it was the duty of the Council to refer to them and explain why it rejected them.

With regard to the second ground of law counsel argued that although the Minister of the Interior did not vote he took part in the proceedings and introduced the submission in which he gives certain directives to the Council as to how they should proceed with the examination of the case instead of sending all relevant documents to them without any comment.

As far as the last ground is concerned counsel argued that the

Council were misled by the letter of Counsel of the Republic in that he asked them to re-examine only its own decision and not any previous ones. This, it was counsel's contention, amounts to him telling the Council not to take into account what the Minister said in his decision and that the Council, sitting as an appeal Court, had to re-examine the Minister's decision.

Counsel for the respondent, on the other hand, argued that the Minister did not participate in the decision of the Council and stated that the Council re-examined the whole case, having before it the representations of the applicant which concerned the decision of the Minister and that they were not, in any way, misled by the letter of Counsel of the Republic which, in any event, was not capable of misleading. He finally argued that the Council acted within its discretionary powers and the Court cannot interfere with their subjective evaluation of the severity of the sentence to be imposed on the applicant.

Before dealing with the grounds argued I find it necessary to refer to the decision of the Minister as it is material for the consideration of this case.

It is obvious from a mere reading of the decision that he did take into consideration the fact that the applicant was once interdicted upon a charge for a disciplinary offence which finally was not pursued and his interdiction was in the end terminated; and although it is correct to say that the Court cannot interfere with the severity of the sentence imposed by disciplinary organs this is a matter which goes to the very validity of the decision itself in that it could not legitimately be taken into consideration because every person charged with an offence is presumed innocent until his guilt is proved before a competent tribunal. Relevant in this respect is, inter alia, the case of *Menelaou* v. *The Republic* (1980) 3 C.L.R., 467 where at p. 484 the following is stated:

> "Having considered the arguments of both counsel, and in the light of the authorities quoted at length, I have reached the conclusion that the rules of natural justice are applicable to the disciplinary proceedings and because the Acting Commander of Police has taken also into consideration a case against the applicant which until that time had not been heard and which was fixed on another date for hearing, he

allowed himself wrongly in my view, and in violation of the principles of natural justice, to be influenced by it and thus to impose finally the punishment of dismissal from the service. In reaching this conclusion, I have relied on Cyprus cases, and particularly on cases decided by the Greek Council of State, viz., that the disciplinary organ, when trying a case, cannot take into consideration a pending case against an applicant which until that time had not been tried and there is no decision with regard to it."

It is clear in the light of the above that the decision of the Minister was vulnerable on this ground.

It is convenient and in sequence of the events that have led to the sub judice decision to deal first with the third ground argued which relates to the letter of Counsel of the Republic, exhibit 3, addressed to the Director-General of the Ministry of the Interior and the possible effect of that letter i.e. whether as a result the Council of Ministers did not examine the decision of the Minister.

The full text of the letter has been set out earlier on in this judgment and need not be repeated.

As a matter of law the result of the annulment of an administrative act or decision is that such act or decision ceases to exist as if it had never taken place; and under the principles of administrative law in case of a hierarchical recourse the decision of the inferior organ merges in the decision of the hierarchically superior organ and loses its executory character the only executory act being the final one, that of the hierarchially superior organ. (See Conclusions from the Case Law of the Greek Council of State 1929-1959, pp. 241-242).

In the present case the Court has declared the decision of the Council of Ministers to be null and void with the direction that it should be reconsidered in the light of the said judgment i.e. to give the applicant the right to be heard. This was done and the applicant in due course submitted his representations in support of his appeal. The representations so submitted concerned the validity of the decision of the Minister and were put before the Council for the first time since the right to be heard was not given to the applicant before. But what the Council had to do when re-examining the matter was to consider the

validity or otherwise of the decision of the Minister against which the appeal before it was made by the applicant in the light of his representations, as that was the only issue before them. It also logically follows that in order to consider the representations of the applicant the Council had to examine the decision of the Minister against which they were directed.

It is not, therefore, in my view of much consequence what the letter of Counsel of the Republic was meant to convey to them because they could neither re-examine their previous decision nor the representations of the applicant without considering also the decision of the Minister. What is stated in the extract of the relevant minute of the respondent Council, exhibit 6, is that the Council re-examined the whole case of ex-Inspector Evangelos Petrou and after considering in detail his representations in support of the grounds of appeal against his conviction and sentence contained in the letter dated 20th June, 1980, forwarded to them by his lawyers decided, in accordance with regulation 38 of The Police (Discipline) (Amendment) Regulations, 1976 to dismiss the appeal filed by him.

One matter, however, that creates some ambiguity and tends to lend support to the submission of learned counsel for the applicant is the fact that in the submission to the Council by the Ministry of the Interior express reference is made to the letter of Counsel of the Republic, exhibit 3, and on the basis of that letter it is stressed that what the Council has to re-examine is only its previous decision and not any decision preceding that. Reference is also made therein to the letter forwarded to the applicant requesting him to submit his representations and to the representations submitted on his behalf. All documents mentioned above, including the judgment of the Court, are marked and appended to the submission. No reference at all is made to the decision of the Minister nor is it appended to the submission.

But, on the other hand, as stated earlier on, it is mentioned in the relevant extract of the minutes of the meeting of the respondent Council, exhibit 6, that the Council re-examined the whole case of ex-Inspector Evangelos Petrou and considered in detail also his representations in support of the grounds of appeal against his conviction and sentence contained in the letter dated 20th June, 1980, forwarded to them by his lawyers.

It may be argued that what the above extract purports in effect to convey is that the respondents did consider the decision of the Minister since they re-examined the whole case and considered in detail the representations of the applicant. But in the light of all the circumstances mentioned above the matter is not free from doubt; and such doubt has to be reckoned in favour of the applicant.

I think I can next deal very briefly with the second ground argued i.e. the role of the Minister at the relevant meeting of the Council.

It does not seem to me that the decision can be faulted either on the ground that the submission to the Council, exhibit 5, was in any way partial or that the Minister took an active part in the proceedings. The submission is quite neutral in nature and merely sets out the relevant facts of the case including the letter containing the represenations of the applicant in support of his grounds of appeal in a fair manner and without any comment as to the merits of the case. In the decision itself it is expressly stated that the Minister did not take any part and I do not think that in the absence of any indication whatsoever to the contrary in any of the documents I can reasonably assume that this is not so.

Lastly I will deal with the first ground argued before me, that of reasoning.

The nature of the reasoning required is always a question of degree depending upon the nature of the decision concerned. (See *HadjiVassiliou and Others* v. *The Republic* (1974) 3 C.L.R. 130).

Also it is not necessary to mention in the decision specifically every factor required by law that was taken into consideration, provided that this can be deduced from the whole reasoning. (See *Ierides* v. *The Republic* (1976) 3 C.L.R. 9 and on appeal (1980) 3 C.L.R. 165).

And reasoning may always be supplemented by the material in the relevant file.

The object of the rule requiring due reasoning of administrative decisions is obviously the need to enable the person concerned, and the Court on review, to ascertain whether the deci-

sion is well-founded in fact and in law. (See *Zavros* v. *The Republic* (1969) 3 C.L.R., 310; *Demosthenous* v. *The Republic* (1973) 3 C.L.R. 354; and *Pancyprian Federation of Labour (PEO)* v. *The Board of Cinematograph Films Censors and Another* (1965) 3 C.L.R. 27).

As stated above the Minister in reaching his decision wrongly took into consideration a disciplinary offence for which the applicant was never tried or convicted; and this is one of the points, the most important one in my view, raised on behalf of the applicant in his representations in support of his appeal; and although in the decision of the Council it is stated in general terms that they examined the whole case and did take into consideration applicant's representations, nowhere is it stated nor can it be deduced that in reaching their decision to dismiss the appeal they have, at least, either disregarded or excluded from consideration the offending part in the Minister's decision, or that, notwithstanding that, they were, nevertheless, still of the view that the appeal should be dismissed.

This fact alone, in my view, renders the reasoning incomplete or, to say the least, vague and the gap is not bridged from material contained in any of the documents relevant to this case nor do I think that the presumption of regularity which is applicable in relation to administrative acts can, properly, be invoked in the circumstances of this case.

But apart from the above point I think it is correct to say that, going through the decision of the Council as a whole, no one specific reason can be discorned as to why the appeal was dismissed.

In the *PEO* case (supra) Triantafyllides, J. as he then was, said at p. 37:

> "Administrative law requires further, that administrative decisions, through which there results a situation unfavourable for the subject, is to be duly reasoned. This principle has been adopted also in Greece. (See Conclusions from the Jurisprudence of the Council of State 1929-1959, p. 184; Stassinopoulos on the Law of Administrative Acts (1951) p. 340; Kyriacipoulos on Greek Administrative Law, 4th ed., vol. 2, p. 386). Moreover, decisions of

collective organs such as the one with which we are dealing with, are particularly required to be reasoned because of the very fact that such decisions are expected to be the result of the deliberations of the members of the said organs (see Tsatsos on the Recourse for Annulment before the Council of State, 2nd ed., p. 151).

Relevant in this respect is also the case of *Eleftheriou and Others* v. *The Republic* (1980) 3 C.L.R. 85 at p. 98.

In the light of the above I am driven to the conclusion that the decision challenged is not duly reasoned and that it is, therefore, contrary to the principles of administrative law.

In view of the conclusions that I have reached the sub judice decision has to be declared null and void and of no effect whatsoever.

With regard to costs the respondents are adjudged to pay £30.- against applicant's costs.

Sub judice decision annulled. Order for costs as above.