

1986 February 5

[TRIANTAFYLLODES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

IOANNIS ZENIOS,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COMMANDER OF POLICE,
THE DEPUTY COMMANDER OF POLICE,

Respondents.

(Case No. 306/82).

5 *Res Judicata—Annulling decision of this Court on ground of misconception of fact—In reconsidering the matter, the fact held to have been misconceived, was not taken into consideration—New decision to the same effect as the annulled decision—No violation of principle of res judicata.*

Disciplinary punishment—Judicial control—Principles applicable.

10 Applicant's disciplinary punishment of dismissal from the Police Force was annulled by this Court in *Zenios v. The Republic* (1983) 3 C.L.R. 1181. As a result the case of the applicant was reconsidered, but once again the Deputy Commander of Police imposed on him the same punishment. Hence the present recourse.

15 *Held*, dismissing the recourse: (1) On this occasion the Deputy Commander did not act, as on the previous occasion, under the misconception that it had been found at the disciplinary trial of the applicant that he had acted with immoral intentions. The decision in *Zenios case*,
20 *supra* did not prevent the Deputy Commander from examining anew the conduct of the applicant and from

reaching the decision that, irrespective of the moral aspect of the matter, such conduct merited dismissal.

(2) In the light of the principles governing the exercise of its powers as an administrative Court in dealing with a recourse against a disciplinary punishment, this Court cannot annul the sub judice decision on the ground that the punishment appears to be very severe.

Recourse dismissed.

No order as to costs.

Cases referred to:

- Christodoulou v. Greek Communal Chamber* (1967) 3 C.L.R. 50; 10
- Pavlidis v. The Republic* (1967) 3 C.L.R. 217;
- Markou v. The Republic* (1968) 3 C.L.R. 166;
- Ioannou v. Grain Commission* (1968) 3 C.L.R. 612; 15
- Constantinou v. The Republic* (1972) 3 C.L.R. 116;
- Georgiades v. The Republic* (1976) 3 C.L.R. 380;
- Pieri v. The Republic* (1983) 3 C.L.R. 614;
- Pieri v. The Republic* (1983) 3 C.L.R. 1054;
- Karageorghis v. The Republic* (1983) 3 C.L.R. 1211; 20
- Tornaris v. The Republic* (1983) 3 C.L.R. 1292;
- Kontemeniotou v. The Republic* (1984) 3 C.L.R. 58;
- Stylianou v. The Educational Service Commission* (1984) 3 C.L.R. 776.
- Christodoulou v. The Republic* (1984) 3 C.L.R. 856; 25
- Gava v. The Republic* (1984) 3 C.L.R. 1391;
- Solomou v. The Republic* (1984) 3 C.L.R. 533;
- Papaphotis v. The Republic* (1984) 3 C.L.R. 915;
- Damianou v. The Republic* (1984) 3 C.L.R. 1488.

Recourse.

Recourse against the decision of the respondents to impose on applicant the disciplinary punishment of dismissal from the Police Force.

5 *M. Christophides*, for the applicant.

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

Cur. adv. vult.

10 TRIANTAFYLIDIS P. read the following judgment. The applicant has challenged by means of the present recourse the decision of the respondent Deputy Commander of Police, on the 22nd May 1982, to impose on the applicant the disciplinary punishment of dismissal from the Police.

15 The salient facts of this case have been stated in the judgment which I delivered on the 16th January 1982, in a related earlier recourse of the applicant (No. 33/77, *Zenios v. The Republic*, (1983) 3 C.L.R. 1181) and I need not repeat them in the present judgment.

20 By my judgment in the *Zenios* case, supra, I had annulled, for the reasons stated in such judgment, the disciplinary punishment of dismissal from the Police which had been imposed on the applicant by the Deputy Commander of Police in substitution of the disciplinary sentence of a fine of C£15 which had been imposed in the
25 first instance on the applicant when he had been found guilty of improper conduct.

30 After my judgment in the *Zenios* case, supra, the Deputy Commander of Police reverted to the matter and once again substituted the disciplinary sentence of dismissal from the Police in the place of the disciplinary sentence of a fine.

35 It is abundantly clear from the new, and now sub judice, decision of the Deputy Commander of Police that he persisted in his view that the nature of the conduct in question of the applicant was such that the proper disci-

plinary punishment was the dismissal of the applicant from the Police. On this occasion, however, the Deputy Commander of Police does not appear to have acted, as on the previous occasion, under the misconception that it had been found at the disciplinary trial of the applicant that he had acted with immoral intentions. The Deputy Commander of Police appears to have taken the view that, irrespective of the moral aspect of the matter, the improper conduct of the applicant was such that it had to be punished by his dismissal from the Police and that a disciplinary sentence of only a fine was inadequate.

I have had to examine to what extent the judgment in the *Zenios* case, supra, could be treated, in the present occasion, as a *res judicata* preventing the Deputy Commander of Police from deciding to dismiss the applicant from the Police; and I have done so in the light of relevant case-law of this Court (see, inter alia, *Christodoulou v. The Greek Communal Chamber*, (1967) 3 C.L.R. 50, 59, *Pavlidis v. The Republic*, (1967) 3 C.L.R. 217, 230, *Markou v. The Republic*, (1968) 3 C.L.R. 166, 171, *Ioannou v. The Grain Commission*, (1968) 3 C.L.R. 612, 617, *Constantinou v. The Republic*, (1972) 3 C.L.R. 116, 128, *Georghiades v. The Republic*, (1976) 3 C.L.R. 380, 384, *Pieri v. The Republic*, (1983) 3 C.L.R. 614, 620, which is to be treated subject to the judgment on appeal in the same case in *Pieris v. The Republic*, (1983) 3 C.L.R. 1054, 1064, *Karageorghis v. The Republic*, (1983) 3 C.L.R. 1211, 1221, *Tornaris v. The Republic*, (1983) 3 C.L.R. 1292, 1299, *Kontemeniotou v. The Republic*, (1984) 3 C.L.R. 58, 67, *Stylianou v. The Educational Service Commission*, (1984) 3 C.L.R. 776, 784, *Christodoulou v. The Republic*, (1984) 3 C.L.R. 865, 868 and *Gava v. The Republic*, (1984) 3 C.L.R. 1391, 1394, 1395).

I have reached the conclusion that since the Deputy Commander of Police did not proceed, once again, on the basis that the conduct of the applicant was the result of immoral intentions on his part, he was not prevented by my earlier judgment in the *Zenios* case, supra, from examining anew such conduct and from reaching the decision that, irrespective of the moral aspect of the

matter, it constituted improper conduct which merited disciplinary punishment by way of dismissal from the Police, and not merely by way of a fine.

5 In the light of the principles governing the exercise of the powers of this Court as an administrative Court dealing with a recourse against disciplinary punishment I am of the view that it is not open to me to hold, in this particular case, that the dismissal of the applicant from the Police can be annulled merely because it is punishment
10 which appears to be, indeed, very severe (see, inter alia, in this respect, *Solomou v. The Republic*, (1984) 3 C.L.R. 533, 536, *Christodoulou*, supra, 868, *Papaphotis v. Republic*, (1984) 3 C.L.R. 915, 927 and *Damianou v. Republic* (1984) 3 C.L.R. 1488, 1492).

15 For all the foregoing reasons this recourse fails and it has to be dismissed accordingly; but I shall not make any order as regards its costs.

Recourse dismissed.
No order as to costs.