

1986 February 8

[DEMETRIADIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

LEONTIS CHRISTOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH

(a) THE CHIEF OF POLICE,

(b) THE MINISTER OF INTERIOR,

*Respondents.*

(Case No. 344/84).

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5 *Police Force—The Police (General) Regulations, 1958 - 1980, reg. 7—The Police Law, Cap. 285 as amended by Law 29/66, ss. 13(2) and 13(3)—Termination of services of a person enlisted under said Regulation—In the circumstances of this case such termination was not a disciplinary punishment.*

*Administrative Law—Reasoning of an administrative act—The reasoning may be found either in the act or in the relevant administrative records.*

10 *Administrative Law—Misconception of fact.*

15 The applicant was enlisted in the Police Force on 27.10.81 under the provisions of regulation 7 of the Police (General) Regulations, 1958 - 1980 for an initial period of three years after he had accepted the conditions of service contained in a notice given to him as provided by regulation 5(h) of the said regulations.

The Chief of Police terminated applicants' engagement in the exercise of his powers under regulation 7(1)\* of the said regulations, after he had obtained the approval of

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\* Quoted at p. 93 post.

the Minister of Interior as provided in s.13(2)\* of Cap. 285 as amended by s. 2 of Law 29/66.

In the letter which he wrote to the Minister in order to obtain the latter's approval the Chief of Police informed the Minister that on 9.3.83 the applicant was punished with suspension of his increment for unbecoming conduct, that on 7.9.83 he was found guilty and sentenced to a fine and suspension of his driving licence for 6 months for negligent driving and driving without a certificate of insurance, that on 30.6.83 he was convicted and punished by a disciplinary tribunal for absence from duty without leave, that on 18.11.83 he was sentenced by the disciplinary tribunal to a fine of £18.- for improper conduct towards Inspector B' Mr. Serdaris and for absence of duty without leave and that between 19.7.83—14.9.83 he obtained goods by false pretences for which he had been prosecuted disciplinarily, and punished with a fine of ten days' wages.

The last paragraph of the said letter reads as follows: "It is obvious that the general conduct of the said Constable is incompatible with the status of a Policeman and in view of the aforesaid negative data his further stay in the Force is considered aimless and injurious".

Counsel for the applicant argued that reg. 7(1) is applicable in case the Chief of Police is of opinion that the services of a person enlisted under regulation 7 are not required any more or that he is unsuitable to carry out his duties, but not for disciplinary reasons. He further argued that by the sub judge decision the applicant was punished for a second time for the same disciplinary offences for which punishment had already been imposed on him. Counsel for applicant also submitted that the sub judge decision is not duly reasoned and that the Chief of Police acted under a misconception of fact.

*Held*, dismissing the recourse (1) In view of the contents of the proviso to reg. 7(1), which was embodied in the relevant notice signed by the applicant upon his engage-

\* Sub-sections 2 and 3 of s. 13 are quoted at pp. 92-93 post.

ment, there is no doubt that the Chief of Police had acted within the limits of his discretion with a view not to punish the applicant but to rid the Force of a person whose further stay was detrimental to it. The termination of applicants' services could be effected at any time upon giving to him 30 days' notice as was done in the present case.

(2) The reasoning of an administrative act may be found either in the act or in the relevant administrative records. Such reasoning in this case is adequately provided in the above letter by the Chief of Police to the Minister of Interior.

(3) The allegation that the Chief of Police had laboured under a misconception of fact is unfounded. As it appears from the said letter he was duly aware of the facts which had led him to consider the termination of applicant's services, irrespective of his ability to carry out his work at the Force workshop, where he was engaged.

(4) As in accordance with the proviso to reg. 7(1) the termination may be made at any time upon giving 30 days' notice, the non-taking of an immediate action cannot be considered as preventing the respondents to act subsequently, as was done in this case.

*Recourse dismissed.  
No order as to costs.*

25 Cases referred to:

*Christodoulou v. The Republic* (1968) 3 C.L.R. 603;

*HadjiCleanthous v. The Republic* (1983) 3 C.L.R. 810;

*Constantinou v. The Republic* (1983) 3 C.L.R. 1269;

*Oricitaco Co. Ltd. v. The Republic* (1985) 3 C.L.R. 1327.

30 **Recourse.**

Recourse against the decision of the respondents to terminate applicants engagement in the Police Force.

*A. Eftychiou*, for the applicant.

N. Charalambous, Senior Counsel of the Republic,  
for the respondents.

*Cur. adv. vult.*

DEMETRIADES J. read the following judgment. The applicant in this case, who was a Police Constable, seeks a declaration of the Court that the decision of the respondent Chief of Police terminating his engagement as from the 5th June, 1984, which was communicated to him on the 19th April, 1984, is null and void and of no effect whatsoever. 5

The applicant was enlisted in the Police Force on the 27th October, 1981, under the provisions of regulation 7 of the Police (General) Regulations, 1958 to 1980 for an initial period of three years, after he had accepted the conditions of service contained in a relevant notice given to him, as provided for in regulation 5(h) of the aforesaid Regulations. 10 15

The termination of the engagement of the applicant was effected by the Chief of Police in the exercise of his powers under regulation 7(1) of the Police (General) Regulations 1958 to 1980, after he had obtained in this respect the approval of the Minister of Interior, as provided for in section 13(2) of the Police Law, Cap. 285, as amended by section 2 of the Police (Amendment) Law, 1966 (Law 29/66). 20

Paragraph (2) and (3) of section 13 of Cap. 285 above, read as follows: 25

«(2) Ὁ Ἀρχηγός, τῆ ἐγκρίσει τοῦ Ὑπουργοῦ, διορίζει, κατατάσσει, προάγει καὶ ἀπολύει πάντα τὰ μέλη τῆς Δυνάμεως μέχρι καὶ συμπεριλαμβανομένου τοῦ Ἀρχιεπιθεωρητοῦ. 30

(3) Οἱ ὄροι διορισμοῦ, κατατάξεως, προαγωγῆς, ὑπηρεσίας καὶ ἀπολύσεως μελῶν τῆς Δυνάμεως προβλέπονται ὑπὸ Κανονισμῶν γενομένων ὑπὸ τοῦ Ὑπουργικοῦ Συμβουλίου ἐπὶ τῆ βάσει τοῦ παρόντος ἀρθροῦ καὶ δημοσιευομένων εἰς τὴν ἐπίσημον ἐφημερίδα τῆς Δημοκρατίας: 35

Νοεῖται ὅτι μέχρι τῆς ἐκδόσεως τῶν ἐν τῷ παρόντι

ἔδαφιῳ προβλεπομένων Κανονισμῶν οἱ κατὰ τὴν ἡμερομηνίαν ἐνάρξεως ἰσχύος τοῦ παρόντος Νόμου ἐν ἰσχύϊ Κανονισμοὶ καὶ Γενικαὶ Διατάξεις θὰ ἐξακολουθήσωσιν ἐφαρμοζόμενοι.»

5 (“ (2) The Chief of Police, with the approval of the Minister, appoints, enlists, promotes and discharges all members of the Force up to and including the Chief Inspector.

10 (3) The conditions of appointment, enlistment, promotion, service and discharge of members of the Force are provided by Regulations made by the Council of Ministers under the present section and published in the official gazette of the Republic:

15 Provided that until the issue of the Regulations provided by means of the present paragraph the Regulations and General Orders in force on the date of the coming into force of the present Law shall continue to be applicable.”)

And regulation 7(1) above reads as follows:

20 “7. - (1) Notwithstanding anything in regulation 5 of these Regulations contained and subject to the provisions hereinafter contained, the Chief Constable may, at his discretion, enlist a person as a constable for an initial period not exceeding three years but, at the  
25 expiration of that period, the person enlisted may, if he has given satisfactory service and if his services are further required by the Chief Constable, upon giving three months’ previous notice in writing to the Chief Constable, opt for re-engagement for another like  
30 period:

Provided that the Chief Constable may, at any time, upon giving the person enlisted thirty days’ notice in writing, determine the engagement of such person.”

35 It is pertinent, at this stage, to refer to the relevant letter of the Chief of Police, dated 9th April, 1984, which was addressed by him to the Minister of Interior in order to obtain his approval for the termination of the engagement of the applicant. It reads as follows:

«Παρακαλώ όπως έχω έγκριση του κ. Υπουργού προκειμένου να προβώ στον τερματισμό των υπηρεσιών του πιο πάνω σύμφωνα με τον Κανονισμό 7(1) των περί Αστυνομίας (Γενικοί) Κανονισμών για λόγους ανεπαρκείας και ακαταλληλότητα ήτοι:

- 5
- (1) Ο Αστυφύλακας αυτός είναι τοποθετημένος στην Υπηρεσία Προστατευτικής Ασφαλείας Αρχηγείου. Γράφτηκε στις 27.10.81 και τοποθετήθηκε στο Τμήμα Β' (Μηχανουργείο) αφού παρηκολούθησε την προκαταρκτική σειρά μαθημάτων διάρκειας 3 εβδομάδων. 10
- (2) Στις 9.3.83 του επεβλήθηκε η ποινή της αναβολής της προσαυξήσεως του για ανάρμοστο συμπεριφορά ήτοι για κλοπή τροχοσπίτου.
- (3) Στις 7.9.83 καταδικάστηκε από το Επαρχιακό Δικαστήριο Λευκωσίας σε πρόστιμο και στέρηση της άδειας οδηγού για 6 μήνες αφού παραδέχθηκε κατηγορίες για αμελή οδήγηση οχήματος και οδήγηση χωρίς πιστοποιητικό ασφαλείας. Για την καταδίκη του αυτή παρουσιάστηκε ενώπιον πειθαρχικού Δικαστηρίου και του επεβλήθηκε πρόστιμο £8. 15 20
- (4) Στις 30.6.83 καταδικάστηκε από πειθαρχικό Δικαστήριο για απουσία από το καθήκο χωρίς άδεια και του επεβλήθηκε πρόστιμο 4 ημερομισθίων.
- (5) Στις 18.11.83 επεβλήθηκε από πειθαρχικό Δικαστήριο ποινή προστίμου £18 για (i) απρεπή συμπεριφορά έναντι του κ. Σερδάρη Αστυνομικού Β' και (ii) απουσία από το καθήκο χωρίς άδεια. 25
- (6) Μεταξύ 19.7.83 - 14.9.83 προέβηκε στην απόσπαση διαφόρων εμπορευμάτων με ψευδείς παραστάσεις (ε-ξέδωσε επιταγές χωρίς αντίκρυσμα) συνολικά 6 περιπτώσεις δια τις οποίες διώχθηκε πειθαρχικά και του επεβλήθηκε ποινή προστίμου 10 ημερομισθίων. 30

2. Είναι φανερό ότι η εν γένει διαγωγή του εν λόγω Αστυφύλακα είναι ασυμβίβαστη με την ιδιότητα του Αστυνομικού και υπό το φώς των πιο πάνω αρνητικών δεδομένων περαιτέρω παραμονή του στη Δύναμη κρίνεται άσκοπος και επιζήμια.» 35

5       “May I please have the approval of the Minister so as to proceed to the termination of the services of the above-named pursuant to Regulation 7(1) of the Police (General) Regulations for reasons of insufficiency and unfitness, namely:

- 10       (1) This Constable is posted in the Protective Security Service of the Police Headquarters. He was enlisted on 27.10.81 and was posted at Department B' (Force workshop) having attended the preliminary course of lessons of a duration of 3 weeks.
- 15       (2) On 9.3.83 there was imposed on him the punishment of the suspension of his increment for unbecoming conduct, namely for stealing a caravan.
- 20       (3) On 7.9.83 he was convicted by the District Court of Nicosia to a fine and suspension of his driving licence for 6 months after he had admitted offences for negligent driving of a vehicle and driving without a certificate of insurance. For this conviction of his he appeared before a disciplinary Tribunal and there was imposed on him a fine of £8.
- 25       (4) On 30.6.83 he was convicted by a disciplinary Tribunal for absence from duty without leave and there was imposed on him a fine of 4 days' wages.
- 30       (5) On 18.11.83 there was imposed by the disciplinary Tribunal a sentence of £18.- fine for (i) improper behaviour towards Inspector B' Mr. Serdaris and (ii) absence from duty without leave.
- 35       (6) Between 19.7.83 - 14.9.83 he obtained various goods by false pretences (he issued cheques without having funds to meet them) in all 6 instances for which he had been prosecuted disciplinarily and there was imposed on him a sentence of 10 days' wages fine.

2. It is obvious that the general conduct of the said Constable is incompatible with the status of a Policeman and in view of the aforesaid negative data his further stay in the Force is considered aimless and injurious.”)

The proposed action of the Chief of Police was approved by the Minister of Interior and there followed the letter of 19th April, 1984, communicating to the applicant the sub-judice decision.

Counsel for the applicant argued that the proviso to regulation 7(1) above would be applicable as an administrative measure in case the Chief of Police was of the opinion that the services of the applicant were not required any more or that he was unsuitable to carry out his duties, but not for disciplinary reasons. He complained that as a result of the sub-judice decision the applicant was punished for a second time for the same disciplinary offences for which a punishment had already been imposed on him by the appropriate disciplinary organs and that, therefore, the Chief of Police had exercised, in this respect, his relevant discretionary powers unlawfully and for revengeful reasons, as the disciplinary organs concerned had in no case imposed on him the punishment of termination of his engagement.

As it appears from the contents of the aforesaid letter addressed by the Chief of Police to the Minister of Interior, seeking his approval for the termination of the engagement of the applicant, the reason why such a course was followed was the fact that the unbecoming conduct of the applicant, because of his repeated disciplinary convictions, was incompatible with the status of a policeman and that his further stay in the Force was purposeless and injurious.

What, therefore, falls for decision in this case is whether such a course amounted in any way to a disciplinary measure against the applicant which was unlawfully carried out by the Chief of Police, contrary to the provisions of the relevant Regulations.

In view of the contents of the proviso to regulation 7(1) above, which are drafted in a clear, extensive and unambiguous way and which were embodied in the relevant notice signed by the applicant upon his engagement, I have no doubt that the Chief of Police had acted in the present case within the limits of his discretion and in the exercise of the legitimate rights afforded to him by regulation 7(1) above, with a view not to punish the applicant disciplinarily but



to rid the Force, as he was entitled to do, of a person whose further stay would be detrimental to it. Such termination could be effected at any time upon giving to the applicant 30 days' notice in writing, as was done in the present case.

5 In reaching this conclusion I found useful guidance from a similar approach adopted by this Court in the case of *Christodoulou v. The Republic*, (1968). 3 C.L.R. 603, 609, 610.

10 I find, also, as unsubstantiated the allegation of counsel for the applicant that the sub judge decision was originated by revengeful motives on the part of the respondents and, therefore, the aforesaid argument of counsel for the applicant cannot succeed.

15 Counsel for the applicant had further alleged that the sub judge decision is not duly reasoned and that the respondent Chief of Police had acted under a misconception as to the true facts and circumstances and the ability of the applicant to carry out efficiently his duties.

20 It is well settled that the reasoning of an administrative decision may be found either in the sub judge decision or in the relevant administrative records (see, inter alia, *Hadji-Cleanthous v. The Republic*, (1983) 3 C.L.R. 810, 820, *Constantinou v. The Republic*, (1983) 3 CL.R. 1269, 1273, and *Orictaco Co. Ltd. v. The Republic*, (1985) 3  
25 C.L.R. 1327, 1332). Such reasoning in the present case is adequately provided by means of the contents of the letter addressed by the Chief of Police to the Minister of Interior on the 9th April, 1984. The commission by the applicant of the offences referred to therein was in no way disputed  
30 by him. I find, also, as unfounded the contention of counsel for the applicant that the Chief of Police had acted in any way under a misconception because from the contents of the aforesaid letter it appears that he was duly aware of the facts and circumstances which had led him to consider  
35 as a proper measure the termination of the engagement of the applicant, irrespective of his ability to carry out his work as the Force workshop.

Before concluding I would like to refer briefly to an observation of counsel for the applicant to the effect that

the respondents were estopped from reaching the sub judice decision dated the 19th April, 1984. because they have failed to take any action against him within a reasonable time after the commission by him of the last disciplinary offence, which was committed between the 19th July, 1983 and the 14th September, 1983. 5

I cannot agree either with this contention of counsel for the applicant because under the relevant proviso to regulation 7(1) above, the Chief of Police may, at any time, upon giving the person enlisted thirty days' notice in writing, terminate the engagement of such person. Therefore, the non-taking by the respondents of an immediate action against the applicant could not be considered as preventing them to act subsequently, as was done, in the present case. 10 15

In view of all the aforesaid, the present recourse fails and it is dismissed accordingly, but with no order as to its costs.

*Recourse dismissed.*

*No order as to costs.* 20