

1982 December 11

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LAMBROS EFSTATHIOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE COMMANDER OF POLICE,

2. THE MINISTER OF INTERIOR,

Respondents.

(Case No. 33/80).

Natural justice—Disciplinary proceedings—Accused entitled to be afforded opportunity of being heard—Disciplinary conviction and punishment of Police sergeant whilst he was abroad—His counsel appearing at the trial but withdrawing—Accused not re-summoned after such withdrawal and not given notice of new date of trial—Not afforded opportunity to be heard and defend himself—Respondents acted in contravention of the rules of natural justice—Sub judice decision annulled.

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Whilst the applicant, a police sergeant, was on leave without pay and was working in Saudi Arabia, the Chief of Police by his letter dated 31.3.1979 informed him that a disciplinary investigation against him had commenced and asked him to return to Cyprus. Applicant replied that because of the special duties with which he was entrusted by the company employing him in Saudi Arabia, it was impossible for him to be released from his contract before its expiry and, further, that in case of breach by him of the contract he would be losing financial benefits.

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On September 5, 1979 the Chief of Police informed the applicant that his leave without pay had been withdrawn and asked him to return to Cyprus; and as applicant failed to attend disciplinary measures were taken against him for absence from

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his duties without leave. The disciplinary trial of the applicant was fixed on the 8th October, 1979 and as a result of his non-appearance it was adjourned for hearing to the 26th October, when an advocate appeared on his behalf. The hearing was then adjourned to the 19th November, 1979 when applicant's advocate was granted leave to withdraw because he had received no instructions from applicant. Four witnesses were then called and the applicant was found guilty for absence from his duties without leave and was sentenced to be dismissed from the Force and be deprived of all his rights. Though applicant's address was known to the respondents the latter had not informed him of the charge filed against him nor had they sent to him the summons; and after the withdrawal of his counsel respondents failed to re-summon him or give him due notice of the new date of trial.

Upon a recourse by the applicant:

Held, that disciplinary proceedings are of a quasi judicial nature and it has been repeatedly stated by Common Law Judges, in English and Continental legal literature, as well as Continental judicial decisions, that in proceedings of this nature the citizen is entitled to be given due notice of the decision of the Administration and be afforded the opportunity to be heard; that in view of the fact that the applicant was first informed of the withdrawal of his unpaid leave by the letter of the Chief of Police dated the 5th September, 1979; that as at the time he was abroad and that there is no evidence as to the date he received this letter and that after his counsel withdrew from the case no notice at all was given to him to appear and defend himself, the applicant was not afforded the opportunity to be heard and defend himself and that the respondents acted in contravention of the rules of natural justice; that, therefore, the present recourse succeeds and the sub judge decision will be declared null and void and of no effect whatsoever.

Sub judge decision annulled.

35 Recourse.

Recourse against the decision of the respondents to dismiss applicant from the Police.

A. Eftychiou, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By his present recourse the applicant, who was serving as a Sergeant in the Police Force, prays for a declaration that the decision of the respondents to dismiss him from the Force is null and void and of no legal effect.

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The application is based on the following legal grounds, namely—

- (1) The respondents had tried disciplinarily the applicant in his absence and/or they did not give him the opportunity to defend himself during the hearing of the disciplinary case against him. 10
- (2) The respondents had acted in contravention of the rules of natural justice and/or of the principles of good administration.
- (3) The respondents had acted in excess and/or abuse of power. 15
- (4) The sub judice decision does not have sufficient and/or lawful reasoning and/or was based on a misconception of facts.

On the 10th March, 1978, after an application in this respect, the applicant was granted leave of absence without pay for one year for the purpose of taking up employment with a company in Saudi Arabia. On the 7th December, 1978, he had applied for the extension of his said leave for a further period of one year and, in the meantime, he had applied to the Chief of Police for the grant to him of 179 days leave of absence with pay, a period of leave to which he was credited with and entitled to. The Chief of Police approved the latter application of the applicant and granted to him leave of absence with pay from the 10th March, 1979, to the 29th August, 1979.

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On the 22nd March 1979, on the recommendation of the Chief of Police, the Ministry of Finance approved the application of the applicant for the extension of his abovesaid unpaid leave for a further year. However, as on the 15th February, 1979, the Council of Ministers, by their decision No. 17.728, submitted to the Chief of Police for investigation and/or trial a file containing accusations against the applicant for committing disciplinary offences contrary to the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law,

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1977 (Law 3/77), as amended by Laws 38/77, 12/78 and 57/78, the Chief of Police, on the 31st March, 1979, sent to the applicant a registered letter by which he informed him of the decision of the Council of Ministers and asked him to make
5 arrangements for his return to Cyprus the soonest possible in order to facilitate and for the speeding up of the inquiry against him.

The applicant neither replied to this letter nor in any way responded to it till the 20th August, 1979, when he wrote to
10 the Chief of Police a letter (which was received on the 3rd September, 1979) by which after referring to his application of the 7th December, 1978, and to the letter of the Chief of Police dated 31st March, 1979, informed the Chief of Police that because of the special duties with which he was entrusted
15 by the company employing him in Saudi Arabia, it was impossible for him to be released from his contract before its expiry and, further, that in case of breach by him of the contract, he would be losing financial benefits.

On the 5th September, 1979, there was sent to the applicant
20 on behalf of the Acting Chief of Police, a double registered letter informing him that though the appropriate Ministries had, on the recommendation of the Chief of Police, approved the extension of the leave without pay applied for by him, such leave had been withdrawn (ἀνεστράλη); he was called to
25 return to Cyprus in view of the submission to the Police Force by the Council of Ministers of the file containing complaints against him with regard to the commission of disciplinary offences, as had already been referred in the letter of the 31st March, 1979; and, that as he had failed to comply with the
30 contents of the said letter and had continued to be away from his service after the expiry of his leave with pay on the 29th August, 1979, orders were given for disciplinary measures to be taken against him for absence from his duties without leave. By this letter the applicant was further ordered to return to
35 Cyprus immediately. There is no evidence before me if and when this letter was received by the applicant.

As it appears from the record of the disciplinary proceedings against the applicant—which is *Appendix 1* to the written address of counsel for the respondents—neither the summons containing
40 the charge against the applicant nor copies of the statements

of witnesses relating to the commission by him of the disciplinary offences he was charged with were ever served or brought to his knowledge.

The evidence of Chief Inspector Costas Zavros, witness No. 3 for the prosecution in the disciplinary proceedings, is that he visited the house of the applicant, on the 7th September, 1979, for the purpose of serving on him the above mentioned documents, but when the applicant's wife informed him that applicant was abroad in Saudi Arabia, he left without effecting service.

The case against the applicant was fixed for trial before the Police Disciplinary Committee on the 8th October, 1979. In the file of this case there is a notice (exhibit 'D' attached to the application) sent by the presiding officer of the Disciplinary Committee to "Police Sergeant 4013 Lambros Efstathiou", by which he was informed that he was facing a charge of absenting himself without leave and that he had to appear before the said Disciplinary Committee on the 8th October, 1979, for trial. This notice bears no address and there is no evidence before me that it ever reached the applicant.

The applicant did not appear before the Disciplinary Committee on the 8th October, 1979, and as a result of his non-appearance, the case was adjourned for hearing to the 26th October, 1979, when an advocate appeared on his behalf and asked for the adjournment of the hearing which, despite the objections submitted by the prosecuting officer, was granted.

The trial was then fixed for the 1st November, 1979, and on that day applicant's counsel asked again for an adjournment as he had not been given any instructions by his client. The case was adjourned to the 19th November, 1979, when on that day counsel for the applicant informed the Committee that as he had received no reply to the letter sent to his client on the 2nd November, 1979, asking for instructions, he sought leave to withdraw from the case.

The Disciplinary Committee gave the following Ruling:

" Έπειδή ὁ κατηγορούμενος δὲν παρουσιάσθη ἂν καὶ εἰδοποιήθη ἐπανεπιημέτως καὶ ὑπὸ τῆς κατηγορίας καὶ τοῦ συνηγόρου του καὶ τοῦ ἐδόθη ἀκετὸς χρόνος ἵνα προσέλθῃ

πρὸς ὑπεράσπισιν ἐν τούτοις δὲν ἐπραξεν τοῦτο ὡς ἐκ τούτου τὸ Δικαστήριον εἶναι ἀναγκασμένον νὰ προχωρήσῃ εἰς τὴν δίκην ἐρήμην τοῦ κατηγορουμένου. Ὁ συνήγορος τοῦ δύναται νὰ ἀποσυρθῇ καὶ ἐπραξεν τοῦτο”.

5 (“As the accused had failed to appear, though he had been repeatedly notified both by the prosecution and by his counsel and though he was given sufficient time to appear for his defence, he, nevertheless, failed to do so, therefore, the Court is bound to proceed with the trial
10 of the accused in his absence. Counsel for the accused can withdraw and he did so”).

Four witnesses were then called and heard by the Disciplinary Committee and the case was adjourned for judgment to the 26th November, 1979, when the applicant was found guilty
15 for absence from his duties without leave and was sentenced to be dismissed from the Force and be deprived of all his rights as from the 29th August, 1979.

In the present case there are some very striking facts that I feel should be mentioned and commented upon.

20 The first is that though the Chief of Police, as it appears from the letters addressed by him to the applicant, knew his address in Saudi Arabia, nobody thought it proper to send the summons or at least inform the applicant by letter of the charge filed against him and of the date on which he had to appear before
25 the Disciplinary Committee of the Force and, further, to give him sufficient time for appearing.

The second is the short period of time given between the 20th September, 1979, when the notification exhibit ‘D’ attached to the application was written by the presiding officer of the
30 Disciplinary Committee and the 8th October, 1979, the date on which the case was fixed for hearing, especially as it was well known that the applicant was abroad.

The third is the failure of the Disciplinary Committee to resummon the applicant and/or give him due notice of the new date of trial after they had granted leave to counsel appearing for him to withdraw from the case.
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The fourth is that the Disciplinary Committee based their decision on the alleged withdrawal by the Chief of Police of the unpaid leave granted to the applicant, a fact which was

for the first time brought to the knowledge of the applicant by the letter of the Chief of the Police, dated the 5th September, 1979.

At this stage, I consider it necessary to include in my judgment the two letters, dated 31st March, 1979, and 5th September, 1979, so that a clear picture of the situation is given. 5

“ Ἀρχ. Π. Φ. Λοχ. 4013 ΥΠΟΥΡΓΕΙΟΝ ΕΣΩΤΕΡΙΚΩΝ
ΑΡΧΗΓΕΙΟΝ ΑΣΤΥΝΟΜΙΑΣ
ΛΕΥΚΩΣΙΑ
Τῆ 31ῆ Μαρτίου, 1979. 10

Registered
Mr. Lambros Efstathiou,
c/o DITCO Co. Ltd.,
P.O.Box 5030,
JEDDAH, SAUDI ARABIA. 15

Παρακαλῶ σημειώσατε ὅτι τὸ Ὑπουργικὸν Συμβούλιον δι' ἀποφάσεώς του ὑπ' ἀρ. 17.728 τῆς 15ῆς Φεβρουαρίου, 1979, παρέπεμψε διὰ περαιτέρω ἔρευναν ἢ/καί ἐκδίκασιν φάκελλον περιέχοντα καταγγελίας ἐναντίον σας, ἀναφορικῶς πρὸς τὴν διάπραξιν ἀδικημάτων δυνάμει τοῦ περὶ Ὁρισμένων Πειθαρχικῶν Παραπτωμάτων Νόμου 3/77, ὡς οὗτος ἔχει τροποποιηθῆ ὑπὸ τῶν Νόμων 38/77, 12/78 καὶ 57/78. 20

2. Πρὸς διευκόλυνσιν καὶ ἐπίσπευσιν τῆς ἀνακριτικῆς διαδικασίως, καλεῖσθε ὅπως διευθετήσετε τὰ τῆς ἐπιστροφῆς σας εἰς Κύπρον τὸ συντομώτερον δυνατὸν. 25

δι' Ἀρχηγὸν Ἀστυνομίας”

(“P.F. Sgt. 4013 MINISTRY OF INTERIOR
POLICE HEADQUARTERS
NICOSIA
31st March, 1979 30

Registered
Mr. Lambros Efstathiou,
c/o DITCO Co. Ltd.,
P.O.Box 5030,
JEDDAH, SAUDI ARABIA. 35

Please note that the Council of Ministers by its decision No. 17.728 of the 15th February, 1979, has forwarded for further investigation and/or trial a file containing accusations against you regarding the commission of offences contrary to the Certain Disciplinary Offences 40

(Conduct of Investigation and Adjudication) Law 3/77 as amended by Laws 38/77, 12/78 and 57/78.

2. For facilitating and hastening the investigating procedure you are requested to arrange for your return to Cyprus the soonest possible.

“ ‘Αρχ. Π.Φ. Λοχ. 4013 for Chief of Police”).

“ΥΠΟΥΡΓΕΙΟΝ ΕΣΩΤΕΡΙΚΩΝ
ΑΡΧΗΓΕΙΟΝ ΑΣΤΥΝΟΜΙΑΣ
ΛΕΥΚΩΣΙΑ

10 **DOUBLE REGISTERED** 5η Σεπτεμβρίου, 1979.
Mr. Lambros Efstathiou,
c/o DITCO Co. Ltd.,
P.O.Box 5030,
JEDDAH, SAUDI ARABIA.

15 ‘Αναφέρομαι εις την έπιστολήν σας ήμερομηνίας 20.8.1979
καί έπιθυμώ νά σάς πληροφορήσω ότι παρά τò γεγονός
ότι τά άρμόδια ‘Υπουργεία είχον, τή ήμετέρα συστάσει,
έγκρίνει παράτασιν τής άδειάς σας δι’ έν εισέτι έτος, έν τούτοις,
20 αύτη άνεστάλη ύφ’ ήμών καί έκλήθητε όπως έπιστρέψητε
εις Κύπρον, έν όφει τής παραπομπής προς ήμάς, ύπό του
‘Υπουργικού Συμβουλίου, φακέλλου περιέχοντος καταγ-
γελίας έναντίον σας άναφορικώς προς την διάπραξιν άδι-
κημάτων κατά παράβασιν του Νόμου περί Καθάρσεως
(‘Ημετέρα έπιστολή ήμερ. 31.3.1979).

25 2. ‘Επειδή όμως δέν συνεμορφώθητε προς την άνωτέρω
έπιστολήν μας καί έξακολουθεíte νά εύρίσκεσθε μακράν τής
ύπηρεσίας καί μετά την έκπνοήν τής μετ’ άπολαβών άδειάς
σας την 29.8.1979, έχουν δοθη όδηγίαι διά την πειθαρχικήν
30 ύμών δίωξιν δι’ άπουσίαν έκ του καθήκοντος άνευ άδειάς
δι’ ό και έντέλλεσθε όπως έπιστρέψητε πάραυτα εις Κύπρον.
δι’ ‘Αναπλ. ‘Αρχηγόν ‘Αστυνομίας”.

(“P.F. Sgt. 4013

MINISTRY OF INTERIOR
POLICE HEADQUARTERS
NICOSIA

35 **DOUBLE REGISTERED.** 5th September, 1979.
Mr. Lambros Efstathiou,
c/o DITCO Co. Ltd.,
P.O.Box 5030,
JEDDAH, SAUDI ARABIA.

40 I refer to your letter dated 20.8.1979 and I wish to inform

you that in spite of the fact that the appropriate Ministries had, on my recommendation approved extension of your leave for one more year, still, it had been withdrawn by me and you were asked to return to Cyprus, in view of the submission to me by the Council of Ministers, a file containing accusations regarding the commission of offences contrary to the law for purgation. (My letter dated 31.3.1979). 5

2. But because you did not comply with my above letter and you continue to be away from your duty after the expiration of your leave without pay on 29.8.1979, instructions have been given for disciplinary proceedings against you for absence from duty without leave and you are therefore ordered to return immediately to Cyprus. for Dep. Chief of Police"). 10 15

Disciplinary proceedings are of a quasi judicial nature and it has been repeatedly stated by Common Law Judges, in English and Continental legal literature, as well as Continental judicial decisions, that in proceedings of this nature the citizen is entitled to be given due notice of the decision of the Administration and be afforded the opportunity to be heard. 20

In view of the fact that the applicant was first informed of the withdrawal of his unpaid leave by the letter of the Chief of Police dated the 5th September, 1979; that at the time he was abroad and that I do not have before me evidence as to the date he received this letter and that after his counsel withdrew from the case no notice at all was given to him to appear and defend himself, I find that the applicant was not afforded the opportunity to be heard and defend himself and that the respondents acted in contravention of the rules of natural justice. 25 30

In the light of the above, I find that the present recourse succeeds. As a result of my findings, the sub judice decision is declared null and void and of no effect whatsoever.

The respondents to pay the costs of the applicant. 35

Sub judice decision annulled.