# CASES

DECIDED BY

## THE SUPREME COURT OF CYPRUS

ON APPEAL
AND
IN ITS ORIGINAL JURISDICTION

## Cyprus Law Reports

Volume 3 (*Administrative*)

1987 December 22

[A. LOIZOU, LORIS, STYLIANIDES, PIKIS, KOURRIS, JJ.]

THE REPUBLIC OF CYPRUS, THROUGH THE EDUCATIONAL SERVICE COMMISSION,

*Appellant-Respondent,*

v.

CHRISTOS HADJIEFTYCHIOU,

*Respondent-Applicant.*

*(Revisional Jurisdiction Appeal No. 389).*

*Disciplinary proceedings—Educational Officers—The Educational Service Law 10/69—The proviso to section 4 (2)—Director of Personnel made it known that he did not intend to participate in meetings of the E.S.C. concerning disciplinary charges—Failure to summon him to attend such a meeting—Effect.*

*Constitutional Law—Fair trial (Public hearing)—Constitution, Art. 30.2—*

*Does not apply to disciplinary proceedings.*

*European Convention for the Protection of Human Rights—Art. 6(2)—Does not apply to disciplinary proceedings.*

*Disciplinary proceedings—Educational Officers—The Public Educational Service Law 10/69, section 72(3) and para. 4 of Part III of Second Schedule—Whether proceedings must be held in public.*

*The Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law 3/77, section 4(3), as amended by Law 38/77—In the light of the amendment, the investigations could be conducted by only one of the members of the Investigating Committee.*

*The Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law 3/77, as amended—Acts peformed at a time when the Officer was not a member of the service—Could be made the object of a disciplinary charge.*

*The Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws, 1977 to 1978 (Suspension of Proceeding Law, 1978, Law 57/78)—In dealing with a disciplinary charge under the suspended laws the Commission could not take into consideration the preamble to Law 57/78.*

The disciplinary decision of the E.S.C. whereby the respondent (applicant) was found guilty on various charges was annulled by the President of this Court on the ground that the members of a collective organ entitled to participate in its meetings must be invited even if they have no right to vote, unless such meetings take place on defined dates fixed and known to its members in advance.

The other complaints of the applicant may be briefly described as follows:

(a) Failure to confer before passing disciplinary sentence,

(b) The proceedings were held in camera. In this respect, the applicant relied on the exclusion of a journalist,which however, as it was claimed by evidence, was due to lack of space. Applicant's contention was suported by reference to section 72(3) of Law 10/69, Part III of the 2nd Schedule thereof, section 112 of the Criminal Procedure Law, Cap. 155 and Art. 30.2 of the Constitution.

(c) The Investigation ought to have been conducted under Law 10/69 and not under Law 3/77. In any event there has been a contravention of Law 3/77 in that the investigation was conducted by only one member of the Committee.

(d) Failure to summon the investigating officer to appear as a witness, contrary to section 70 of Law 10/69, with the result that applicant was unable to produce his statement to the investigating officer.

(e) The E.S.C. had no competence in the matter as the offences charged related to a period of time, when the applicant was not a member of the service, his services having been terminated on grounds of public interest before such time.

(f) The E.S.C. failed to take into consideration the preamble to Law 57/78.

(g) The decision is not duly reasoned.

*Held, allowing the appeal*: (A) The Director of Personnel, who was, under the proviso to section 4(2) of Law 10/69, entitled to participate in the meetings of the Commission without a right to vote, made it clear that he did not intend to participate in disciplinary proceedings.

No doubt the members of a collective organ entitled to participate in its meeting must be invited even if they have no right to vote, unless such meetings take place on defined dates fixed and known to its members in advance.

In the circumstances of this case and in the light of the following facts, namely that there was no machinery to compel the Director's attendance, that his absence could not affect the quorum and that so long as there is a quorum, it is not necessary for all members of the collective organ to attend, the appeal should be allowed.

(B) Having allowed the appeal, the Court dealt with the various grounds put forward by the applicant (respondent) in support of his recourse and

Held, *dismissing the recourse*: (a) The applicant did not substantiate the first of his aforesaid complaints.

(b) The provisions of s. 72(3) of Law 10/69 and of para. 3 of Part III of the Second Schedule of Law 10/69 do not mean that disciplinary proceed-

ings are of the same character as criminal proceedings. Art. 30.2 of the Constitution and Art. 6(2) of the European Convention for the Protection of Human Rights do not apply to disciplinary proceedings.

(c) Section 4(3) of the aforesaid Law No. 3 of 1977 was amended by Law No. 38 of 1977, whereby only one member might be appointed to conduct the investigations and in this instance a single member was so appointed in accordance with such provisions.

(d) The factual allegations contained in ground (d) are not borne out by the evidence.

(e) The offences for which he was charged were not confined within the period, when the applicant was not a member of the service. Though under Law No. 3 of 1977 it is required for a person to be an officer (as defined in section 2 thereof) in order that investigations and disciplinary proceedings may be taken against him, it does not emanate from the definition, under the aforesaid section 2, of "disciplinary offences" that such person ought to have been an officer at the time of the commission by him of such disciplinary offences.

(f) The contents of the preamble of the law were not for the appellant Commission to consider and even if there was competence for that it was neither raised by the appellant nor is there the necessary factual background for its examination. Moreover, Law 57/78 did not alter the prerequisites which existed for the application of Law No. 3 of 1977, nor the definition of officer as it appears in section 2 thereof.

(g) There is no merit in the last contention of the applicant.

*Appeal allowed. Recourse dismissed. No order as to costs.*

*Cases referred to:*

*Christodoulides v. Republic* (1985) 3 C.L.R. 1911;

*Matsis v. Republic* (1969) 3 C.L.R. 245;

*Lambrou v. Republic* (1972) 3 C.L.R. 379;

*Engels and Others - Decisions and Judgments of the European Court of Human Rights*, Series A, Vol 22, pp. 33-36.

**Appeal.**

Appeal against the judgment of the President of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 4th April, 1984 (Revisional Jurisdiction Case No. 314/79)* whereby the decision of the Educational Service Commission by virtue of which the respondent was found guilty and punished disciplinarily was annulled.

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

*C. Hadjipieras*, for the respondent.

*Cur. adv. vult.*

A. LOIZOU, J. read the following judgment of the Court. The disciplinary decision which the appellant Commission reached against the respondent-applicant by which he was found guilty of sixteen disciplinary offences and sentenced accordingly, was annulled by the learned President of this Court on the ground that "due to the failure to notify the Director of Personnel about the meetings of the respondent Commission in relation to the applicant, its composition at such meetings was defective".

This conclusion was reached because, and that was common ground, "the Director of Personnel was never notified about and invited to such meetings because with his consent it had been arranged that he should not participate in disciplinary proceedings before the respondent Commission". This arrangement being found by the learned President to be "a flagrant contravention of the proviso to section 4(2) of the Public Educational Service Law 1969, (Law No. 10 of 1969), amounting to an alteration of the composition of the respondent Commission which could have been effected only by the House of Representatives".

The said proviso provided then that, "the Director of Educa-

* *Reported in (1985) 3 C.L.R. 921*

tion, the Director of the Department of Personnel of the Republic and the Head of the Department of the Ministry concerned are entitled to be present at the meetings of the Commission and express their views but without a right to vote". By Law No. 53 of 1979, the presence of the Director of the Department of Personnel was deleted.

No doubt the members of a collective organ entitled to participate in its meetings must be invited even if they have no right to vote, unless such meetings take place on defined dates fixed and known to its members in advance. A violation of these two alternative requirements renders the composition of a collective organ defective.

But in the light of the circumstances of this case, we do not, with respect, agree with the learned President's approach, as the Director of the Department of Personnel made it known that he did not wish to be invited and therefore to attend the meetings of the respondent Commission at which disciplinary proceedings were being conducted. It was clear that the said officer did not intend to attend such proceedings for the obvious reason that as an administrator he was not directly involved as he would have normally been in the case of deliberations for appointments, promotions and other relevant matters regarding the terms of employment of educational officers when he would have been in a position to advise. This is clear by the very fact of the exclusion of the reference to his office in the proviso by the amending Law as already mentioned.

Moreover his absence could not affect the quorum of the Commission as a collective organ, a matter dealt with by this Court in *Petros Christodoulides v. The Republic* (1985) 3 C.L.R. 1911. Nor is it taken so long as a quorum exists. In addition there was no machinery to compel his attendance. For these reasons the appeal should be allowed.

Having reached this conclusion we have now to examine the remaining grounds of Law relied upon in the application as confined by counsel before us, as the learned President in line with well established authority, having annulled the sub judice decision on one ground, found it, and rightly so, unnecessary to deal with the remaining grounds.

The first ground relied upon on behalf of the respondent as the applicant in the recourse, has been that the appellant Commission failed to confer before passing on him the disciplinary sentence. This is not borne out by the evidence adduced and this renders unfounded the contention of the respondent.

The second ground of law is that there has been a contravention of the law and the Constitution in as much as the hearing of the case was held in camera, contrary to section 72(3) and Part III of the 2nd Schedule read in conjunction with Article 30 paragraph 2 of the Constitution and section 112 of the Criminal Procedure Law, Cap. 155.

According to section 72(3) and paragraph 3 of Part III of the dule to the Law, "the hearing of a disciplinary case is conduas far as possible (κατά το δυνατόν), in the same manner as the hearing of a criminal case triable summarily". Such provisions as to the procedure to be followed, however, do not mean that disciplinary proceedings under Law No. 10 of 1969 are of the same character or nature as criminal proceedings, as any such conclusion would in our view be out of line.

Moreover as regards a contravention of Article 30.2 of the Constitution, such Article provides that:

"In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing ..."

We believe that the aforesaid provisions of Article 30.2 which are practically the same as those of Article 6(2) of the European

Convention on Human Rights do not apply to disciplinary proceeding. The matter was considered in the case of *Matsis v. Republic* (1969) 3 C.L.R. 245 at page 270, where it was stated that:

> "... the provisions of our Article 30.2, which are practically the same as those of Article 6(1) of the European Convention of Human Rights, of 1950, apply only to the determination of 'civil rights and obligations or of any criminal charge', and liability under a fiscal law, which is a branch of public law, appears not to come within the ambit of Article 6(1) of the Convention, and, consequently, not within the ambit of our Article 30.2, either. (See 'X against Belgium' decided by the European Commission of Human Rights on the 1st October, 1965, and reported in the relevant 1965 Year Book, No. 8 at p. 282, and particularly at p. 312)."

In the case of *Lambrou v. Republic* (1972) 3 C.L.R. 379, where the services of the applicant were terminated by the Educational Service Committee for disciplinary reasons, it was held at pp. 386-387:

> "A disciplinary charge is not, of course, a criminal charge: also, in view of the decisions of the Commission of Human Rights of the Council of Europe in cases 423/58 (see Collection of Decisions of the Commission No. 1) and 1931/63 (see Yearbook of the European Convention of Human Rights No. 7 at p. 212), I am of the opinion that the disciplinary proceedings against the present applicant were not proceedings for the determination of any civil rights or obligations of his".

From a perusal of the relevant cases and decisions in the Digest of Strasbourg Case Law, relating to the European Convention on Human Rights, Vol. 2, it transpires that Article 6 (1) does not apply to disciplinary proceedings. With regard however, to the distinction between the terms "Criminal charge" and "disciplinary proceedings" we may refer to the case of *Engels and Others*, Decisions and Judgments of the *European Court of Human Rights Series A*, Vol. 22 pp. 33-36.

This ground must therefore be dismissed.

The next ground put forward is that the investigations against the respondent/applicant, were conducted contrary to sections 4 and 5 of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977, (Law No. 3 of 1977) and sections 70 and 72 of the Public Educational Service Law 1969, (Law No. 10 of 1969). The investigation, it was argued, ought to have been properly conducted under Law No. 10 of 1969 but in any event, the provisions of Law No. 3 of 1977 under which the investigation was purported to have been made had not been followed and therefore such investigation was null and void because it was wrongly conducted by only one member of the investigating Committee who alone conducted the investigation and issued the decision.

Section 4(3) of the aforesaid Law No. 3/1977 was amended on the 24th June, 1977 by Law No. 38 of 1977, whereby only one member might be appointed to conduct the investigations and in this instance a single member was so appointed in accordance with such provisions. His relevant report was submitted on the 28th January 1978. Subsequently on 27th October 1978, the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 (Suspension of Proceedings) Law, 1978, (Law No. 57 of 1978), came into force whereby Law No. 3 of 1977, as amended, was suspended as from 15th July 1978, the effect of which was to transfer all cases to the Minister of Justice, to be sent by him to the Council of Ministers which may in turn transfer them to the appropriate authorities, in this instance the appropriate authority being the Ministry of Education, which thereafter should follow the procedure as is provided by Law No. 10 of 1969.

Consequently we find that the investigation was properly conducted and in accordance with the Law. This ground therefore fails.

It was next argued that the appellant Commission acted con-

trary to the provisions of sections 70 of Law No. 10 of 1969 and paragraphs 4 and 5 of Part I of the second Schedule thereto in that it failed to summon the investigating officer to appear before it as a witness or, even though he was summoned by the respondent, he failed to appear, and the respondent was thus unable to produce in evidence his statement dated 16th January 1978 given to the aforesaid investigating officer. Furthermore it was contended, that not all documents had been submitted to the appellant Commission by the investigating officer.

The factual allegations contained in this ground are not borne out by the evidence. It is clear that all the the written statements taken by the investigating officer, of witnesses, as well as that of the respondent of the 16th January 1978, were put before the appellant Commission together with the report of the investigating officer dated the 28th January 1978. This ground is consequently dismissed.

The next argument of the respondent is that the sub judice decision was taken by an organ having no competence on the matter and is therefore wrong in law, as at the relevant time the respondent was not an educational officer because his services as such had been terminated by the Council of Ministers in the public interest on the 1st July 1974. Though, he argued, such termination was subsequently revoked on the 2nd August 1974, all alleged offences had taken place during the period of 1st July 1974 to 2nd August 1974.

In the first place it transpires from the documents before us that the offences for which he was charged were not confined within the aforesaid period, but also took place prior to and after these dates. Secondly, though under Law No. 3 of 1977 it is required for a person to be an officer (as defined in section 2 thereof) in order that investigation and disciplinary proceedings may be taken against him, it does not, in our view, emanate from the definition, under the aforesaid section 2, of "disciplinary offence" that such person ought to have been an officer at the time of the commission by him of such disciplinary offences, as it does not

preclude from being charged persons who became such officers as defined therein subsequent to the committal of the disciplinary offences. This argument therefore also fails.

Nor do we see any merit in the next argument of the respondent/applicant that the sub judice decision is contrary to law in that the appellant Commission failed to take into consideration the Preamble of Law No. 57 of 1978, which refers to "unrepenting harmful elements" (αμετανόητα επιβλαβή στοιχεία), the respondent not being such.

It is clear that the contents of the Preamble of the law were not for the appellant Commission to consider and even if there was competence for that it was neither raised by the appellant nor is there the necessary factual background for its examination. Moreover as already stated above, that the proceedings against the respondent were taken under Law No. 3 of 1977, which applied to all officers as defined in section 2 thereof and Law No. 57 of 1978 by virtue of which such proceedings were transferred to the appellant Committee does not alter the prerequisites which existed for the application of Law No. 3 of 1977, nor the definition of officer as it appears in section 2 thereof. This contention we must also dismiss.

Finally we find no merit in the argument that the sub judice decision is not duly reasoned as ample reasoning appears in the decision itself which in any case can also be supplemented by the material, in the file of the proceedings against the respondent.

For the reasons stated above the appeal of the appellant Commission is allowed, but the grounds of law relied upon in the application of the present respondent/ applicant in the recourse fail and are hereby dismissed.

In the circumstances, however, there will be no order as to costs.

*Appeal allowed.*
*No order as to costs*