[LOIZOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS CHRISTODOULOU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COMMANDER OF POLICE,

Respondent.

(Case No. 21/66).

Police Force—Police (General) Regulations 1958 *to* 1960*—Regulation* 7(1)*—Police Constable enlisted thereunder—Determination of his engagement under the proviso thereto—Does not amount to a disciplinary measure, but to exercise of a legitimate right under the said proviso—Cf. paragraph* 8 *of the Disciplinary Code, contained in the first Schedule to the Police (Discipline) Regulations* 1958 *to* 1960.

Administrative Law—Administrative decision—Reasoning of—May be found either in the decision itself or in the relative official records.

Reasoning—Reasoning of an administrative decision—See above.

Disciplinary measure—As distinct from a measure taken by the Commander of Police in the exercise of a legitimate right under the relevant regulations—The object of such measure not being to punish the Constable concerned, but to rid the Police Force of him.—See above under Police Force.

The Applicant in this case, who was a member of the Police Force, seeks by this recourse a declaration that the decision of the Commander of Police terminating his engagement which was communicated to him on the 28th December 1965, (*Exhibit* 1), is *null* and *void* as being contrary to law and/or in abuse of powers.

The Applicant was enlisted in the Force under regulation 7 of the Police (General) Regulations 1958 to 1960 on the 5th February, 1964. Paragraph (1) of this regulation is quoted *post* in the Judgment. Under the proviso thereto "The Chief Constable may, at any time, upon giving the

person enlisted thirty day's notice in writing, determine the engagement of such person".

On November 26, 1965, the Applicant was convicted on his own plea by the District Court of Kyrenia of the offence of receiving stolen property, to wit, a bicycle valued at £8, and was fined £5. On December 11th, 1965, disciplinary proceedings were instituted against the Applicant for the disciplinary offence of having been convicted by the Court for a criminal offence; this is a disciplinary offence by virtue of paragraph 18 of the Discipline Code, which is contained in the First Schedule of the Police (Discipline) Regulations 1958 to 1960. The Police officer who presided at the disciplinary proceedings imposed the punishment of 'severe reprimand'. The matter was left at that and no further steps were taken either by way of review or appeal.

On the 28th December, 1965, the Applicant received the aforesaid letter *Exhibit* 1 of the Commissioner terminating his engagement under the proviso to paragraph (1), of regulation 7 of the Police (General) Regulations 1958 to 1960 (This letter *Exhibit* 1 is quoted in full in the Judgment *post*).

It was argued on behalf of the Applicant, *inter alia,* that the said decision was arbitrary and that it was not reasoned; that it is of a disciplinary nature and, consequently the Applicant ought to have been given a chance to defend himself.

The Court in dismissing the recourse:

Held, (1). Having given the matter due consideration I am inclined to agree with counsel for the Respondent that, in the circumstances of this case, the termination of Applicant's services conveyed to him by *exhibit* 1 does not amount to a disciplinary measure but merely to the exercise of a legitimate right on the part of the Police Commander under the proviso to regulation 7 of the Police (General) Regulations, in the sense that the object of the termination of Applicant's services was not to punish him (that could be achieved under the Police (Discipline) Regulations) but to rid the Force, as was his duty to do, of a person who was not fit to be a constable *(Haros* and *The Republic,* 4 R.S.C.C. 39; and *Pantelidou* and *The Republic,* 4 R.S.C.C. 100, both *distinguished).*

(2) Lastly, I have not been satisfied that there is any merit in the contention that the decision complained of was

either arbitrary or not duly reasoned. The Police Commander had before him all relevant papers; and it is well established that the reasoning of an administrative decision may be found either in the decision itself or in the relative official records. But quite independently of this, I think it may be reasonably argued that the letter *Exhibit* 1 by means of which the decision was conveyed to the Applicant is itself duly reasoned *(Editor's Note: this letter Exhibit* 1 *is quoted post in the Judgment)*.

Recourse dismissed with costs.

Cases referred to:

Nicolas Haros and *The Republic*, 4 R.S.C.C. 39, *distinguished;*

Maro Pantelidou and *The Republic*, 4 R.S.C.C. 100, *distinguished.*

Recourse.

Recourse against the decision of the Respondent terminating Applicant's engagement as a member of the Police Force.

G. Tornaritis, for the Applicant.

S. Georghiades, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following Judgment was delivered by:

LOIZOU, J.: The Applicant in this case, who was a member of the Police Force, seeks a declaration that the decision of the Commander of Police terminating his engagement which was communicated to him on the 28th December, 1965, is *null* and *void* and of no effect whatsoever as being contrary to law and/or in abuse of powers.

There does not seem to be any dispute regarding the facts of the case and in fact learned counsel for the Applicant when opening his case put the facts before the court by reading the facts as they appear in the Opposition and which are shortly as follows:

The Applicant was enlisted in the Police Force as a constable under regulation 7 of the Police (General) Regulations 1958 to 1960 on the 5th February, 1964. Paragraph (1) of this regulation reads as follows:

"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 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 period".

and then follows the material proviso:

"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".

On the 16th November, 1965, a charge for receiving stolen property, to wit, a bicycle valued at £8, was filed in the District Court of Kyrenia against the Applicant in Criminal case No. 1586/65. The date of the offence as given in the charge-sheet (*exhibit* 2) is between the 1st January, 1964 (presumably this is the date the bicycle was stolen) and the 25th June, 1965. On the 26th November, 1965, the case came up for hearing before the said District Court and the Applicant pleaded guilty to the charge and was fined £5.

On the 11th December, 1965, disciplinary proceedings were instituted against the Applicant for the offence of having been convicted by the Court for a criminal offence; this is a disciplinary offence by virtue of paragraph 18 of the Discipline Code, which is contained in the First Schedule to the Police (Discipline) Regulations 1958 to 1960. The Police Officer who presided at the disciplinary proceedings says in his Judgment that he takes a serious view of the offence, but nevertheless the punishment he inflicted on the accused was "severe reprimand" because, he goes on, "in view of the low punishment, the Criminal Court imposed on the accused, obviously for some good reasons in favour of him and having given due regard to the good report I had from the prosecution, respecting his character, I consider that the punishment of a 'severe reprimand' is enough to meet the merits of this case".

Be that as it may, the matter was left at that and no further steps were taken either by way of review or appeal.

On the 28th December, 1965, the Applicant received the letter *exhibit* 1, which reads as follows:

«Δυνάμει τῶν ἐξουσιῶν δι' ὧν περιβέβλημαι διὰ τοῦ κανονισμοῦ 7(1) τῶν περὶ 'Αστυνομίας (Γενικῶν) Κανονισμῶν 1958–1964, διὰ τῆς παρούσης μου παρέχω εἰς ὑμᾶς 30 ἡμερῶν προειδοποίησιν ἀπὸ σήμερον ὅτι αἱ ὑπηρεσίαι σας εἰς τὴν 'Αστυνομίαν τερματίζονται ἀπὸ τῆς 27ης 'Ιανουαρίου, 1966. 'Η τελευταία ἡμέρα τῆς πληρωμῆς σας θὰ εἶναι ἡ 26η 'Ιανουαρίου, 1966.

2. Κατὰ τὴν διάρκειαν τῆς περιόδου 28.12.65–26.1.66 δὲν θὰ ἐργάζεσθε ἀλλὰ θὰ εὑρίσκεσθε ἐπ' ἀδείᾳ.

3. "Ολη ἡ ἐν τῇ κατοχῇ σας εὑρισκομένη Κυβερνητικὴ περιουσία ἤτοι ρουχισμός, ταυτότης κτλ. δέον ὅπως παραδοθῇ εἰς τὸν 'Αστυνομικὸν Διευθυντὴν 'Επαρχίας Κυρηνείας πρὸ τῆς ἀπολύσεώς σας.

4. Τὸ διάταγμα διὰ τοῦ ὁποίου ἐτέθεσθο εἰς διαθεσιμότητα ἠρθη τὴν 21ην Δεκεμβρίου, 1965 καθ' ὅλην δὲ τὴν περίοδον ποὺ εὑρίσκεσθο εἰς διαθεσιμότητα ἤτοι ἀπὸ τῆς 8ης Σεπτεμβρίου, 1965 μέχρι τῆς 20ης Δεκεμβρίου, 1965 ἀμφοτέρων τῶν ἡμερομηνιῶν συμπεριλαμβανομένων θὰ πληρωθεῖτε μόνον τὸ ἥμισυ τῶν ἀπολαβῶν σας, θὰ λάβητε δὲ πλήρεις ἀπολαβὰς ἀπὸ τῆς 21.12.65–26.1.66.

'Αρχηγὸς 'Αστυνομίας»

In consequence on the 3rd February, 1966, the present recourse was filed praying for the declaration cited at the beginning of this Judgment.

The Application is based on the following grounds of law as they appear in the Application itself:

"(a) Upon Article 146 of the Constitution.

(b) The decision complained of is contrary to law.

(c) The decision complained of was made in excess and abuse of powers in so far as there were more lenient penalties which could be imposed on the Applicant".

On the 23rd April, 1966, learned counsel for the Applicant was ordered by the court to furnish particulars of the grounds of law on which he based his Application; such particulars were eventually furnished on the 1ht7 February, 1967 and they read as follows:

"(a) The decision of the Commander of Police was not reasoned.

(b) The decision of the Commander of the Police is arbitrary and without any factual or legal foundation as there was no valid reason for his dismissal.

(c) The decision to dismiss the Applicant is of a disciplinary nature and as such the Applicant ought to have been given a chance to speak for himself".

In the course of his address at the hearing of this case learned counsel for the Applicant repeated that the decision was not duly reasoned and also that it is of a disciplinary nature and that, therefore, the Applicant should have been called and given a chance to speak for himself. In support of this last contention he cited the cases of *Nicolas Haros* and *The Republic,* 4 R.S.C.C. p. 39 and *Maro Pantelidou* and *The Republic,* 4 R.S.C.C. p. 100. Another point made by counsel in the course of his address was that the decision of the Police Commander was too harsh bearing in mind that the Disciplinary Board which had the right to dismiss the Applicant only severely reprimanded him.

In the Opposition it is contended that the termination of Applicant's engagement as a constable was legally made by virtue of regulation 7(1) of the Police (General) Regulations 1958 to 1960, on the basis of which the Applicant was originally enlisted in the Police Force and in the light of all the circumstances of the case. After stating the facts, learned counsel for the Respondent, quite frankly and clearly, goes on to say that in view of those facts and circumstances the Police Commander thought it proper that he should exercise his right to terminate the engagement of the Applicant under regulation 7 of the Police (General) Regulations and in consequence he sent the requisite notice (*exhibit* 1). In the course of the hearing he submitted that the termination of Applicant's engagement was not a disciplinary measure but an administrative act not with a view to punish the Applicant but with a view to expel from the Force a member of it whose presence in the Force might be detrimental to the good name of the police generally and to the opinion the public has of the Police Force; in other words that the Commander acted in the public interest and not with a view to punish the Applicant. Finally he submitted that under the proviso to regulation 7 of the Police (General) Regulations

the Police Commander may terminate the services of a constable enlisted under the said Regulation for any reason, or for no reason at all, provided he complies with the conditions therein contained. He also cited and distinguished the cases of *Haros* and *Pantelidou* from the present case. Both cases cited were cases where disciplinary proceedings were involved and it is well settled that in such cases the officer concerned should be afforded an opportunity of being heard before a decision is taken.

It will be observed that under the Police (General) Regulations 1958 to 1960 constables may be enlisted either under regulation 6 for an initial probationary period of three years at the end of which, and provided the constable has given satisfactory service and is, in the opinion of the Chief Constable, in every respect, suitable for retention in the Force, he is confirmed as a constable, or under the regulation 7 above cited. But, whereas under regulation 6 the Chief Constable may, at any time, during the probationary period, discharge any constable who in his opinion is unlikely to become an efficient constable, under regulation 7 no such restriction is placed by the proviso thereto, and the Chief Constable may, at any time, upon giving the person enlisted 30 days notice in writing terminate his enlistment or re-engagement.

Probably the difference of approach is due to the fact that under regulation 7 an enlistment can be made not withstanding the provisions of regulation 5 of the same Regulations, which lay down certain minimum requirements and qualifications for candidates to be eligible for appointment to the Police Force.

Let me now turn to the grounds of law upon which the Applicant bases his case. I think I need not comment at all in so far as grounds of law (a) and (b) in the Application itself are concerned, because quite obviously the Application is based on Article 146 of the Constitution and it is equally clear that there is legal provision in the Police (General) Regulations 1958 to 1960 under which the Police Commander could act. With regard to ground (c) I do not think that just because there are more lenient penalties that can be imposed on a person the imposition of a severer penalty necessarily makes the decision in excess or in abuse of powers; but in any case the decision complained of was not taken

in disciplinary proceedings under the Police (Discipline) Regulations, but under regulation 7(1) of the Police (General) Regulations.

There remain the additional grounds, which were filed later, by order of the Court, that the decision to dismiss the Applicant is of a disciplinary nature and, therefore, the Applicant ought to have been given a chance to speak for himself and that the decision of the Commander of Police was arbitrary and not reasoned. As it clearly appears from the Opposition and as stated by learned counsel for the Respondent there is no doubt that one of the reasons, probably the main reason, why the Police Commander terminated the service of the Applicant was the fact that he was found guilty upon his own plea of receiving stolen property. I cannot imagine that anybody could reasonably argue that a person who commits such an offence is fit to be a policeman. But the question that arises is whether the termination of Applicant's engagement was, in the circumstances, a disciplinary measure. In considering this question it must be borne in mind that there was power under the Police (Discipline) Regulations to review the decision taken at the disciplinary proceedings and vary the punishment to any other punishment which might have been imposed for the offence, which includes the punishment of dismissal; and we must not lose sight of the fact that the disciplinary proceedings were concerned merely with his conviction by the court and not with the actual offence of receiving which may, although from the circumstances it may look rather unlikely, have been committed before his enlistment and could not, therefore, be the subject of disciplinary proceedings.

Having given the matter due consideration I am inclined to agree with learned counsel for the Respondent that, in the circumstances of this case, the termination of Applicant's services conveyed to him by *exhibit* 1 does not amount to a disciplinary measure but merely to the exercise of a legitimate right on the part of the Police Commander under the proviso to regulation 7 of the Police (General) Regulations, in the sense that the object of the termination of Applicant's services was not to punish him (that could have been achieved under the Police (Discipline) Regulations) but to rid the Force, as was his duty to do, of a person who was not fit to be a constable.

Lastly, I have not been satisfied that there is any merit

in the contention that the decision of the Police Commander was either arbitrary or not duly reasoned. It has been stated before this court and it has not been denied by the Applicant that in taking the decision complained of the Police Commander had before him all relevant papers including the notes in the criminal case in which the Applicant was convicted, the notes of the disciplinary proceedings, the investigating officer's covering report etc., which are the main facts which led to his decision; and it is well established that the reasoning of an administrative decision may be found either in the decision itself or in the relative official records. But quite independently of this, I think, it may be reasonably argued that the letter by means of which the decision was conveyed to the Applicant is itself duly reasoned, especially in view of the last paragraph thereof from the contents of which the reasons of the Commander's decision should have been quite obvious to anybody reading that letter and any elaboration on such reasons would not have served any useful purpose.

For all the above reasons it was, in my view, open to the Respondent to take the decision complained of and this recourse must, therefore, fail.

In the result the case is dismissed with costs.

Application dismissed with costs.