IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

COSTAS PLATRITIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF INTERIOR,

Respondents.

(*Case No.* 91/68).

Public Service and Public Officers—Disciplinary control, proceedings and punishment—Public officer—Punished disciplinarily and "required to resign"—Regulation 18 (1)(*a*)(*ii*) *of the Police (Discipline) Regulations* 1958*—Decision of the Council of Ministers dismissing appeal made under Regulation* 19(2) *of the said Regulations—Recourse against that decision of the Council of Ministers—Decision not duly reasoned on its face—But this absence of proper reasoning is remedied by the reasons appearing in the documents which were before the Council of Ministers when considering the Applicant's said appeal—Allegation of misconception of fact not pursued or established—Sub judice decision not taken in excess or abuse of powers.*

Disciplinary control—Disciplinary punishment—Police officer—See hereabove; see, also, immediately herebelow.

Disciplinary proceedings and punishment—Jurisdiction of the Supreme Court on a recourse under Article 146 *of the Constitution—Review by the Court of a decision of the Council of Ministers dismissing an appeal taken by the Applicant (police officer) under aforesaid Regulation* 19(2) (supra) *against his disciplinary punishment by the Presiding Officer—Supreme Court has no power under Article* 146 *of the Constitution to impose a lesser punishment—Position in Greece different due to express statutory provisions.*

Supreme Court—Jurisdiction on a recourse under Article 146 *of the Constitution—See above.*

Pension and Gratuity—Disciplinary punishment—Police officer "required to resign" as a disciplinary punishment under Regulation 18(1)(*a*)(*ii*) (supra)—*Such case is outside the ambit of sections* 6 *and* 7 *of the Pensions Law, Cap.* 311—*Cf. also section* 5 *of same Law—Applicant's claim for such pension under the said sections not dealt with by the Council of Ministers, the only competent organ in the matter of such claim—But dealt with instead by the Minister of Interior who eventually rejected said claim—Position remains the same once the Council of Ministers clearly has no power to grant such pension or gratuity in the case of the Applicant under said sections* 6 *and* 7 *of the Pensions Law, Cap.* 311—*Cf. section* 5 *of same Law—*

Administrative acts or decisions—Need of due reasoning especially when act or decision concerned is adverse to the citizen—Lack of proper reasoning apparent on the face of the decision concerned—Can be supplied or remedied by reasons appearing on the record of the case at the material time—See, also, hereabove.

Police Officers—Disciplinary control and punishment—See hereabove passim.

Recourse under Article 146 *of the Constitution—Jurisdiction of the Supreme Court on such recourse against decisions of administrative bodies imposing disciplinary punishment—See hereabove.*

Findings of fact—Made by administrative bodies—Presumption of correctness—Allegation of misconception of fact has to be proved by the Applicant.

In this recourse under Article 146 of the Constitution the Applicant, an ex police-officer, is challenging (a) the decision of the Council of Ministers whereby they dismissed his appeal against the disciplinary punishment imposed upon him by the Presiding Officer on October 30, 1967, consisting in that he was required to resign from the police force under Regulation 18(1)(a)(ii) of the Police (Discipline) Regulations 1958; and (b) the decision of the Minister of Interior (Respondent 2) to the effect that the aforesaid disciplinary punishment did not entitle him to any pension or gratuity, in view of sections 5, 6 and 7 of the Pensions Law, Cap. 311. The said appeal to the Council of Ministers (Respondent 1) was taken under Regulation 19(2) of the aforesaid Police (Discipline) Regulations 1958. Regulations 18(1)(a) and 19(2) (*supra*) as well as sections 5, 6 and 7 of the Pensions Law, Cap. 311 (*supra*) are set out *post* in the judgment of the Court.

It was argued on behalf of the Applicant that the decision of the Council of Ministers complained of (1) was not duly reasoned; (2) was taken by the Council acting under a misconception of fact and without holding full and proper enquiry into all the facts of the case. Regarding the decision of the Minister of Interior (Respondent 2) (*supra*) it was argued that the Council of Ministers have failed to consider, by analogy, sections 6 and 7 of the Pensions Law, Cap. 311 in order to exercise their discretion whether or not to grant to the Applicant his pension rights, especially in view of the fact that the disciplinary punishment imposed on the Applicant was not "dismissal" under (i) but merely "requirement to resign" under (ii) of the said Regulation 18(1)(a) (*supra*). Incidentally it was further argued on behalf of the Applicant that the Court in reviewing the disciplinary decision of an administrative body exercising its disciplinary powers, was empowered in reviewing the whole case to reach a decision to impose a lesser punishment on the Applicant because the punishment imposed was disproportionate to the gravity of the offence. In support of this argument counsel relied on a passage of the well-known text-book of Kyriakopoulos on Greek Administrative Law (4th edition) vol. 3 at p. 305.

Dismissing the recourse the Court:-

Held, I. As to the absence of due reasoning and as to the alleged misconception of fact:

(1) I am in agreement with the principles expounded in a number of cases regarding the need for due reasoning of administrative decisions; particularly so, when such decision is adverse to the citizen. Furthermore, I would like to stress that due reasoning is also required to enable this Court to carry out effectively its judicial powers of control over the public organs (see Kyriakopoulos op. cit. vol. 2 at p. 386; The Conclusions from the *Jurisprudence of the Greek Council of State* 1929–1959, at p. 184; and Stassinopoulos on the Law of Administrative Acts (1959) at p. 340).

(2) But in the present case the Applicant was clearly and unequivocably informed that the Council of Ministers, in dismissing his appeal, were exercising their powers only under Regulation 19(2) of the Police (Discipline) Regulations 1958 (see *post* in the judgment). Admittedly, however, the decision of the Council of Ministers was not on the face of it duly

reasoned, but so long as the reasoning can be substituted by the documents which were before the Council of Ministers then, in my view, such absence of proper reasoning does not affect the legality of the decision (see Stassinopoulos op. cit. at p. 341). *Constantinides* v. *The Republic* (1967) 3 C.L.R. 7 at p. 14 *distinguished.*

(3) Regarding the argument that the Council of Ministers acted under a misconception of fact, it would appear that it was no longer pursued by counsel. In any event such allegation has to be proved by the Applicant. Decided cases both in Greece and in Cyprus have created a technical curb on the control of misconception of fact, having indeed established a presumption in favour of the correctness of the findings of fact made by the administration.

Held, II. As regards the argument that the Council of Ministers failed to exercise their discretion under sections 6 *and* 7 *of the Pensions Law, Cap.* 311 *whether or not to grant to the Applicant his pensions rights:–*

(*Note:* Sections 5, 6 and 7 of the Pensions Law, Cap. 311 are set out *post* in the *judgment of the Court*).

(1) Having given my best consideration to this argument I am inclined to agree with counsel for the Respondents that the case of the Applicant does not come within the provisions of sections 6 and 7 of the Pensions Law, Cap. 311 (*supra*). Indeed it would have been surprising if the view of counsel for the Applicant had prevailed; because it would have indeed made meaningless the provisions of those sections, particularly so when the officer who leaves the office before attaining the age of 55, has been forced to do so as a result of a disciplinary punishment because he was found guilty in a criminal case on a charge of larceny.

(2) True the Council of Ministers is the only competent organ to deal with matters arising out of the aforesaid sections 6 and 7 of Cap. 311, whereas in the present case the matter was dealt with by the Minister of Interior without remitting the case to be decided by the Council. But, in my view, the position remains the same, because, once the Council of Ministers have no power under these sections to grant any pension or gratuity it does not make any difference at all that the Minister of Interior by his letter of February 29, 1968 (see *this letter post in the judgment*) refused to accede to the

Applicant's request for pension without remitting the matter to be decided by the Council of Ministers.

(3) It follows that the Applicant failed to establish a case under the provisions of the Pensions Law (*supra*). One can hardly argue that the service of the Applicant was terminated on the ground that such termination was desirable in the public interest (see section 7 of the said Law *post* in the judgment); indeed that would be stretching one's imagination too far.

Held, III. As to the submission inviting the Court to impose a lesser disciplinary punishment:-

(1) I regret to say that I find this argument untenable. In Greece the position is different because of specific provisions in a Greek statute.

(2) Here the matter is governed by Article 146 of the Constitution under the provisions of which Article this Court has no power to impose a lesser disciplinary punishment. In the present case obviously the Court cannot interfere with the severity or not of the disciplinary punishment of the Presiding Officer imposed on the Applicant, once the Council of Ministers decided to dismiss the Applicant's appeal under Regulation 19(2) (*supra*), thus confirming the punishment.

Application dismissed.

Cases referred to:

Constantinides v. *The Republic* (1967) 3 C.L.R. 7 at p. 14.

Recourse.

Recourse against the decision of the first Respondent dismissing Applicant's appeal against the disciplinary punishment of "requirement to resign" imposed upon him by the Presiding Officer under the provisions of Reg. 18(1)(a)(ii) of the Police Discipline Regulations, 1958 and against the decision of Respondent 2 to the effect that the said punishment did not entitle him to any pension or gratuity.

L. Clerides, for the Applicant.

L. Loucaides, Senior Counsel of the Republic, for the Respondents.

Cur. adv. vult.

The following judgment was delivered by:-

HADJIANASTASSIOU, J.: In these proceedings, under Article 146 of the Constitution, the Applicant (a) seeks to challenge the decision of the Council of Ministers to dismiss his appeal against the disciplinary punishment imposed upon him by the Presiding Officer on October 30, 1967; and (b) the decision of Respondent 2 that the punishment, viz. that the Applicant was required to resign from the police force did not entitle him to any pension or gratuity.

The Applicant has joined the Cyprus police force on August 14, 1944, as a police constable; on July 1, 1956, he was promoted to sergeant, and on November 1, 1956 he became a sub-inspector. On April, 14, 1960, he was serving as an Ag. Chief Inspector of Police till November 1, 1965.

In October, 1963, the Applicant, because of the death of the late police sergeant Yiannis Michael, was instructed by his superiors to keep all voluntary contributions both of the police and gendarmerie, which were given for the purpose of aiding his widow and child. The Applicant collected the sum of £445.—, but because of the recent troubles of December 1963, and family circumstances, he used part of this money. On July 10, 1965, the Applicant approached the widow of the deceased sergeant, and after explaining to her his difficulties in paying the amount which he had collected for her benefit, the widow agreed and accepted a bond issued in her favour for the sum of £445.- with interest at 8% as from July 1, 1964.

The Applicant, having failed to meet his debt on the day the payment became due, and after a complaint was made by the said widow to the police authorities, he was charged before the District Court of Nicosia on a charge of larceny by an agent; after a long trial he was found guilty on September 15, 1966, and was fined to pay the sum of £150. It would be added, however, that the full amount owed to the widow was deposited with the Registrar of the District Court during the hearing of the case.

The Applicant appealed to the Supreme Court against his conviction, but on June 6, 1967, his appeal was dismissed. In view of the result of the criminal proceedings, the police authorities instituted disciplinary proceedings against the Applicant. On October 30, 1967, the Presiding Officer, after hearing the case of the Applicant, found him guilty of the

disciplinary offence, and a sentence of "requirement to resign" was passed on him under the provisions of Regulation 18(1)(a)(II) of the Police (Discipline) Regulations, 1958. Later on this punishment was reviewed and confirmed by the Commander of Police, (see *exhibit* 4) as well as by the Minister of the Interior.

On November 28, 1967, the Applicant, feeling aggrieved, appealed to the Council of Ministers against his punishment, but on January 11, 1968, his appeal was dismissed. (See *exhibit* 6).

On January 18, 1968, the Director-General wrote to counsel acting for the Applicant the following letter:–

> «Ἐνετάλην νὰ ἀναφερθῶ εἰς τὴν ὑμετέραν ἐπιστολὴν ἡμερομηνίας 28ης Νοεμβρίου, 1967, ἐπὶ τοῦ θέματος τοῦ τέως Ἀνθυπαστυνόμου Κώστα Πλατρίτη, καὶ νὰ πληροφορήσω ὑμᾶς ὅτι τὸ Ὑπουργικὸν Συμβούλιον κατὰ τὴν συνεδρίαν αὐτοῦ τῆς 11ης Ἰανουαρίου, 1968, ἐμελέτησεν ἔφεσιν ἐκ μέρους τοῦ κ. Πλατρίτη κατὰ τῆς ἐπιβληθείσης εἰς αὐτὸν πειθαρχικῆς ποινῆς τῆς 'ἀπαιτήσεως διὰ παραίτησιν', δυνάμει τοῦ Κανονισμοῦ 18(1) τῶν περὶ Ἀστυνομίας (Πειθαρχικῶν) Κανονισμῶν, 1958, καὶ ἀπεφάσισεν (ἀπόφασις ὑπ' ἀρ. 7385) ὅπως ἀπορρίψῃ τὴν ἐν λόγῳ ἔφεσιν δυνάμει τοῦ Κανονισμοῦ 19(2) τῶν ὡς ἄνω Κανονισμῶν.»

On January 30, 1968, counsel on behalf of the Applicant wrote a letter to the Director-General of the Ministry of the Interior (*exhibit* 7), enquiring as to whether his client, in view of the punishment, would have been entitled to any pension, gratuity or any other right.

On February 29, 1968, the Director-General replied to Mr. Clerides in these terms:–

> «Ἐν συνεχείᾳ τῆς ὑπὸ τὸν αὐτὸν ὡς ἄνω ἀριθμὸν καὶ ἡμερομηνίαν 12ην Φεβρουαρίου, 1968, ἡμετέρας ἐπιστολῆς, ἐπὶ τοῦ θέματος τοῦ πελάτου σας τέως Ἀνθυπαστυνόμου Κώστα Πλατρίτη, ἐνετάλην νὰ πληροφορήσω ὑμᾶς ὅτι ὁ Γενικὸς Εἰσαγγελεὺς τῆς Δημοκρατίας ἐγνωμοδότησεν ὅτι μετὰ τὴν παραίτησιν τοῦ κ. Πλατρίτη, κατ' ἀπαίτησιν τοῦ ἁρμοδίου πειθαρχικοῦ ὀργάνου, οὗτος δὲν δικαιοῦται εἰς καταβολὴν συντάξεως ἢ ἄλλου ὠφελήματος.»

It would be observed from the contents of this letter, that it is obvious that the opinion of the Attorney-General was

sought by the Ministry of Interior before deciding whether or not to grant pension or any other kind of gratuity to the Applicant.

The Applicant, feeling aggrieved, filed the present recourse on March 21, 1968, and his application was based, *inter alia*, on the following grounds of law:- (1) that under Article 29 of the Constitution, all decisions of any organ or authority of the Republic exercising executive or administrative authority should be duly reasoned; (2) that the disciplinary punishment imposed on the Applicant was approved on appeal by Respondent 1, acting on a misconception of fact and without holding full and proper enquiry into all the facts of the case.

Counsel, on behalf of the Applicant, relying on the authority of *Constantinides* v. *The Republic* (1967) 3 C.L.R. 7 at p. 14, has contended (a) that the decision of the Council of Ministers in dismissing his appeal, was *null* and *void* because it was not duly reasoned in accordance with the principles of administrative law; (b) that the Court, in reviewing the disciplinary decision of an administrative body exercising its disciplinary powers, was empowered in reviewing the whole case, to reach a decision to impose even a lesser punishment on the Applicant because the punishment was disproportionate to the offence. In support of his argument, counsel relies on a passage from the well-known text-book of *Kyriakopoulos* 4th edn. Vol. Γ at p. 305.

Counsel on behalf of the Respondents, on the contrary, has contended that the decision of the Council of Ministers was duly reasoned because of the procedure which had preceded their decision, and which appears in the minutes of the disciplinary proceedings attached to the said decision. In support of his submission, he relied on the *Conclusions from the Jurisprudence of the Greek Council of State* 1929–59 at p. 187. Counsel further argued that the Court, in reviewing the disciplinary decision of an administrative body, had no power to impose a lesser punishment.

I consider it convenient, before dealing with the submissions of counsel, to deal with the power of the Pesiding Officer to impose punishment on any member of the police force found guilty of an offence against the Discipline Code. Regulation 18(1)(a) is in these terms:-

"In the case of Inspector –

(i) dismissal;

(ii) requirement to resign;

(iii) reduction in rank or grade;

(iv) withholding stoppage or deferment of increment;

.....

Provided that, where a punishment of dismissal, requirement to resign, reduction in rank or grade, or withholding, stoppage or deferment of increment has been imposed, the decision and punishment shall be subject to review by the Chief Constable and confirmation by the Governor."

I now turn to Regulation 19(2) which reads:–

"An Inspector aggrieved by any decision or punishment may, within seven days from the date on which the decision arrived at by the Chief Constable on review or confirmation, is communicated to him, appeal to the Governor, whose decision shall be final."

Pausing there for a moment, it would be observed that although, under this regulation, the decision of the then Governor and now Council of Ministers is final, nevertheless, this is no longer so, in view of the provisions of Article 146 of the Constitution.

As regards the first contention of counsel, I would like to state that I am in agreement with the principles expounded in a number of cases, and of the need for the due reasoning of administrative decisions, under the well-established principles of administrative law; particularly so, when the administrative decision is adverse to the citizen. Furthermore, I would like to stress that the reasoning is also required to enable this Court to carry out effectively its judicial powers of control over the organs of the Republic. See on the question of this principle *Kyriakopoulos on Greek Administrative Law*, 4*th edn. Vol. II p.* 386; *The Conclusions from the Jurisprudence of the Greek Council of State* (1929–59) *at p.* 184; and *Stassinopoulos on the Law of Administrative Acts*, (1959) *at p.* 340.

But, with due respect to counsel, I hold a different view, because the facts of this case can be distinguished from the

case of *Constantinides supra.* In the case in hand, the Applicant was clearly and unequivocably informed, that the Council of Ministers, in dismissing his appeal, were exercising their powers only under Regulation 19(2) of the Police (Discipline) Regulations (1958). Admittedly, of course, the decision of the Council of Ministers was not duly reasoned, but so long as the reasoning can be substituted from the documents which were before the Council of Ministers, then, in my view, the absence of proper reasoning does not affect the legality of the decision. See on this issue *Stassinopoulos*, referred to above, *at p.* 341.

For the reasons I have endeavoured to explain, I have reached the conclusion that the decision of the Council of Ministers was not taken in abuse or excess of powers, and I would, therefore, dismiss this submission of counsel on this issue.

With regard to the second contention of counsel, that this Court, in reviewing the decision of the Council of Ministers, has power to impose even a lesser punishment upon the Applicant, I regret to say that I find this argument untenable; because the passage quoted from Kyriakopoulos was based on specific provisions of a Greek Law. In fairness, however, to counsel, he rightly conceded, in my view, during his argument, that in Cyprus, there is no legislation dealing with this matter, except the procedure followed under Article 146 of the Constitution.

I would like to state that under Article 146 of the Constitution, it is also clear that the argument of counsel cannot stand, because the Supreme Constitutional Court has exclusive jurisdiction to adjudicate finally on a recourse involving alleged unconstitutionality, illegality, or excess or abuse of power, involving any matters concerning a decision and/or omission of any organ, authority or person exercising executive or administrative authority. There can be no doubt, that Article 146 was specifically intended to create a separate system of administrative justice which has been entrusted to that Court, and that the Court can only adjudicate in cases relating to matters, where consequent upon its decision, the Court may order the Respondent to take some executive or administrative action. That this is not so in this case is obvious, because the Court cannot interfere with the severity or not of the sentence of the Presiding Officer imposed upon the Applicant,

once the Council of Ministers decided to dismiss the appeal, thus confirming the punishment.

I would like to repeat that I regret that this Court, in the absence of legislation, cannot apply, in the present case, the procedure and the principles followed in Greece, in cases of dismissal of public servants.

I would, further, like to observe that although in paragraph 2 of the Grounds of Law the Applicant has alleged that Respondent 1, in approving the disciplinary punishment, acted under a misconception of fact, nevertheless, this argument was no longer pursued by counsel, and I take it that it has been abandoned. In any event, this allegation has to be proved by the Applicant, because it is considered as correct, and that decided cases have created a technical curb on the control of the misconception of fact, having indeed established a presumption in favour of the correctness of finding of fact; this is so because interference in the field of the findings of fact belongs to the sphere of the administration which should have a real freedom in its methods of work and which should not be weakened. As I have said earlier, this principle is expressly confirmed by decided cases both in Greece and in Cyprus. I would, therefore, dismiss also this contention of counsel.

Counsel for the Applicant has finally argued that because of the distinction being made in Regulation 18 between "dismissal" and "requirement to resign" of a police officer, the Council of Ministers have failed to consider, by analogy, the provisions of sections 6 & 7 of the Pensions Law, Cap. 311, in order to exercise their discretion whether or not to grant to the Applicant his pension rights.

I propose dealing with sections 5, 6 and 7 of the Pensions Law.

> "5(1) No officer shall have an absolute right to compensation for past services or to pension, gratuity or other allowance; nor shall anything in this Law affect the right of the Crown to dismiss any officer at any time and without compensation.
>
> 5(2) Where it is established to the satisfaction of the Governor in Council that an officer has been guilty of negligence, irregularity or misconduct, the pension, gratuity or other allowance may be reduced or altogether withheld.

6. No pension, gratuity or other allowance shall be granted under this Law to any officer except on his retirement from the public service in one of the following cases:–

(a) On or after attaining the age of fifty-five years or in any case in which the Governor, under the provisions of this Law, may require or permit an officer to retire on or after attaining the age of fifty years, on being required or permitted so to retire;

.....

(c) on the abolition of his office;

.....

(f) in the case of termination of employment in the public interest as provided in this Law;

7. Where an officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Governor in Council may, if he thinks fit, grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 of this Law."

Having given my best consideration to this argument, I am inclined to agree with counsel for the Republic that the case of the Applicant does not come within the provisions of the sections of the Pensions Law. Indeed, it would have been surprising if the view of counsel for the Applicant had prevailed, because it would have indeed made meaningless the provisions of sections 6 and 7, particularly so, when the officer who leaves the office before attaining the age of 55, has been forced to do so as a result of a disciplinary punishment, because he was found guilty in a criminal case on a charge of larceny.

I agree, of course, that in the present case, the Council of Ministers has not dealt with the point in issue, but in view of the provisions of the law, the position remains the same, because once the Council of Ministers was not entitled to

exercise their discretion under the Law, in my view, it does not make any difference at all, whether the Ministry of the Interior, in refusing to accede to the application of the Applicant, has relied on the advice of the Attorney-General of the Republic, without remitting the case to be decided by the Council.

I would like to reiterate once again, that the Applicant has failed to establish a case under the provisions of the Pensions Law, because one can hardly argue that the service of the Applicant was terminated on the ground that such termination was desirable in the public interest; indeed, that would be stretching one's imagination too far.

However, I would be inclined to add that, in view of the good past record of the Applicant, and in view of his long and faithful service in the police force, particularly during the difficult days, counsel should try to present the case of his client to the Council of Ministers on compassionate grounds rather than on legal.

For the reasons I have endeavoured to explain, I have reached the conclusion that the Applicant was not entitled to any pension rights, in view of the fact that a disciplinary punishment was imposed upon him, viz. a "requirement to resign" from the force, and I would, therefore, affirm the decision of the Council of Ministers. In the light of this decision, I would dismiss the application.

Application dismissed.