IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS M. HADJISINNOS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COMMANDER OF POLICE,

Respondent.

(*Case No.* 71/67).

Public Service and Public Officers—Termination of service—Police Constable serving on probation—Termination of his service under regulation 6(2) *of the Police (General) Regulations* 1958 *to* 1966—*Main, if not the sole, reason therefor, his bad disciplinary and other record—Constable not given the opportunity of being heard before the termination of his service—Consequently, the decision complained of must be annulled—No matter whether the reasons for such termination may be, prima facie, so overwhelming as to render it improbable that anything will be forthcoming from him which would render his dismissal unnecessary—Cf. Regulation* 7 *of the said Regulations; Article* 12 *of the Constitution—See, also, herebelow.*

Disciplinary control, proceedings and punishment—Termination of service—It may not always be easy to draw the line between disciplinary and other terminations of service—Test to be applied is to ascertain the essential nature and predominant purpose of the particular termination of service—In case of doubt whether a termination is disciplinary or not then such doubt ought to be resolved by treating the termination of service in question as being disciplinary—In order to afford the public officer concerned the safeguards ensured through the appropriate procedure applicable to disciplinary matters—See, also, hereabove and herebelow.

Natural justice—Rules of natural justice—No disciplinary sanction should be imposed without the public officer concerned being given the opportunity to be heard before the sanction in question is decided upon.

Police Force—Police Constable—Termination of service etc. etc.—See hereabove.

In this recourse, the Applicant, a police constable on probation challenges the validity of the decision of the Chief of the Police dated February 21, 1967 which reads:

> " Under the powers vested in me by regulation 6(2) of the Police (General) Regulations 1958 to 1966 I hereby give you notice that your services in the police are terminated from February 25, 1967 as unlikely to become an efficient constable."

Regulation 6(2) (*supra*) reads:

> "(2) The Chief Constable (now the Chief of Police) may at any time during the probationary period discharge any constable who is in the opinion of the Chief Constable unlikely to become an efficient constable."

The Applicant's probationary period was due to expire in July 1967. It is common ground that the Applicant has got four previous disciplinary convictions, plus three criminal convictions, which do not appear, however, to have been the subject of disciplinary proceedings (see particulars *post* in the judgment). In paragraph 5 of the statement of facts of the opposition the Respondent states:

> "5. Viewing the aforesaid criminal and disciplinary convictions of Applicant and his general conduct and behaviour the Commander (the Chief of Police) discharged the Applicant as in his opinion he is unlikely to become an efficient constable."

It has never been suggested that the Applicant was given an opportunity of being heard before the decision complained of was taken.

It was submitted on behalf of the Applicant, *inter alia*, that (1) the reason for the termination of his service, although in the aforesaid decision (*supra*) represented as being that he "was unlikely to become an efficient constable", in fact was his disciplinary record; and therefore (2) his service could not be lawfully terminated without his being given an opportunity of being heard.

Annulling the decision of the Respondent the Court:-

Held, (1). On the whole record it is fair to conclude that the main if not, the sole reason, for the *sub judice* decision was the Applicant's disciplinary record plus the three convictions which do not appear to have been the subject of disciplinary proceedings.

(2)(a) It is not suggested that the Applicant was given an opportunity of being heard before the decision complained of was taken.

(b) It is true that there is nothing in regulation 6(2) of the Police (General) Regulations 1958 to 1966 (*supra*) about a constable being given an opportunity of being heard before his service is terminated thereunder. But when the service of a public officer is terminated and there is a doubt as to the essential and predominant purpose of the termination, the doubt ought to be resolved by treating the termination as being disciplinary in order to afford the public officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters (see *Kalisperas and The Republic*, 3 R.S.C.C. 146 at p. 151).

(3)(a) In cases where the termination must be treated as disciplinary the Officer concerned must be given an opportunity of being heard before the termination is decided upon.

(b) The above principle applies to every public officer, established or unestablished and even to public officers on probation, even in cases where the reasons for such termination are so overwhelming as to render it improbable that anything will be forthcoming from him which could render the termination unnecessary (see *Kalisperas'* case *ubi supra and Pantelidou and The Republic*, 4 R.S.C.C. 100 at pp. 106–7).

(c) Indeed the aforesaid principle is applicable to all cases of disciplinary control within the domain of public law (see *Haros and The Republic*, 4 R.S.C.C. 39 at p. 44).

(4) For the above reasons I am constrained notwithstanding the Applicant's record to hold that the decision complained of in these proceedings must be annulled. The Chief of the Police must reconsider the matter after giving the Applicant an opportunity of being heard. In the circumstances I make no order as to costs.

Sub judice decision annulled.
No order as to costs.

Cases referred to:

Kalisperas and The Republic, 3 R.S.C.C. 146 at p. 151, applied;

Haros and The Republic, 4 R.S.C.C. 39 at p. 44 adopted;

Pantelidou and The Republic, 4 R.S.C.C. 100 at pp. 106-107, applied.

Recourse.

Recourse against the decision of the Respondent terminating Applicant's service as a Police Constable.

L. Clerides, for the Applicant.

A. Frangos, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment was delivered by:-

STAVRINIDES, J.: The Applicant challenges a decision of the Chief of Police dated February 21, 1967 (*exhibit* 1, hereafter referred to as "the subject decision"), which reads:

> " Under the powers vested in me by reg. 6(2) of the Police (General) Regulations 1958 to 1966 I hereby give you notice that your services in the police are terminated from February 25, 1967 as 'unlikely to become an efficient constable'.
>
> The last day of payment will be the February 24, 1967.
>
> 2. During the period of your interdiction, that is July 14, 1966 to February 24, 1967 you will be paid half emoluments."

It is common ground that the Applicant, having originally enlisted on February 6, 1964, under reg. 7 of the above Regulations, which provides for "special enlistment", was, in July of that year, appointed a constable on probation under reg. 6 of those Regulations and that at the time of the subject decision he was serving in the Police Force on probation under the latter regulation. So far as material, this regulation reads:

> "(1) Subject to the provisions hereinafter contained, enlistment shall be for an initial period of three years

(hereinafter referred to as 'the probationary period') during which the constable shall be on probation:

(2) The Chief Constable may, at any time during the probationary period, discharge any constable who is in the opinion of the Chief Constable unlikely to become an efficient constable.

(3) After the expiration of the probationary period if 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 shall be confirmed as a constable:

Provided that the Chief Constable may at his discretion reduce or extend the period of probation or, if the constable has previous service in the Force, regard such service as the period of probation.

(4) A constable enlisted under Regulation 7 of these Regulations who is accepted for re-enlistment under this Regulation shall be deemed to have been enlisted under this Regulation as from the date of his enlistment under Regulation 7 and shall cease to be eligible for any gratuity payable under that Regulation."

Paragraphs 3, 4 and 5 of the statement of facts at p. 2 of the opposition (which statement is hereafter referred to as "the defence") read:

"3. During his service Applicant was punished under the Police (Discipline) Regulations, 1958, as follows:-

(a) On October 7, 1964, for absence from duty—admonished.

(b) On January 10, 1966, for criminal conviction—deferment of increment for two years.

(c) On May 4, 1966, for neglect of duty and disobedience—fined two days' pay and severely reprimanded.

(d) On May 14, 1966, for discreditable conduct—£1 fine.

4. Further Applicant during his service has been convicted for the following criminal offences:

(a) On August 20, 1965, for carrying explosive substances—£25 fine or six months' imprisonment.

(b) On October 15, 1966, for common assault and disturbance—£10 fine, £1.500 costs and bound over in the sum of £25 for one year to come up for judgment.

(c) On June 5, 1966, for allowing an unlicensed person to drive his car—£3 fine.

5. Viewing the aforesaid criminal and disciplinary convictions of Applicant and his general conduct and behaviour the Commander discharged Applicant as in his opinion he is unlikely to become an efficient constable."

At the hearing it was explained by Mr. Frangos for the Respondent that the conviction referred to in para. 3(b) of the defence was that set out in para. 4(b) thereof, while the "discreditable conduct" referred to in para. 3(d) was cohabitation with a prostitute. No part of either of those paragraphs or those explanations has been disputed. There is nothing on the record to show what the interdiction referred to in the subject decision had been imposed for. The expression "Chief Constable" used in the Regulations, was the title of the Chief of Police when they were made, while "Commander" has been used by Mr. Frangos as a rendering in English of the present title.

The case for the Applicant is that (a) the subject decision was not duly reasoned; (b) the reason for the termination of his service, although in that decision represented as being that he "was unlikely to become an efficient constable", in fact was his disciplinary record; and therefore (c) his service could not lawfully be terminated without his being given an opportunity of being heard.

It is convenient to deal first with the second of those points. The contents of para. 5 of the defence were affirmed by Mr. Frangos in his address when he said: "In deciding on discharge the (Chief of Police) had in mind the facts appearing in the opposition". No particulars have been vouchsafed to the Court of the "general conduct and behaviour" referred to in para. 5 of the defence. In the circumstances it is reasonable to presume that all that was meant by that phrase was the cumulative effect of the matters appearing in paras. 3 or 4

of the defence; and on the whole record it is fair to conclude that the main, if not the sole, reason for the subject decision was the Applicant's disciplinary record set out in para. 3 of the defence plus the convictions set out in para. 4(a) and (c) thereof, which do not appear to have been the subject of disciplinary proceedings.

Coming now to point (c), it is not suggested that the Applicant was given an opportunity of being heard before the subject decision was taken. Now Mr. Frangos said that the Applicant's probationary period was due to expire in July, 1967; and this has not been disputed. The question, therefore, is whether the service of a probationer constable may be terminated during the currency of the probationary period without his being given such an opportunity, when the main (if not the sole) reason for such action is his disciplinary record, plus one or more convictions by a criminal Court for which he has not been dealt with by way of disciplinary proceedings. On this question Mr. Frangos said that "action under reg. 6(2)", on which, as stated in the subject decision, the Chief of Police relied, "does not require a hearing of the person concerned"; and he referred to *Pantelidou* and *Republic*, 4 R.S.C.C. 100, at pp. 106, 107, where the former Supreme Constitutional Court said:

> "In the opinion of the Court, strict adherence to the principle concerned is most essential, in spite of the fact that such a course may occasionally result in causing some delay and that the reasons for dismissing a public officer may sometimes be, prima facie, so overwhelming as to render it improbable that anything will be forthcoming from him which would render his dismissal unnecessary, and the more so because in Cyprus disciplinary control is vested, not in the appropriate Ministers or other Heads of Departments who are expected to have considerable direct and personal knowledge of their subordinates, but in an extra-departmental organ like the Commission, which usually acts upon papers placed before it and contained in the personal file of the officer concerned."

It is true that there is nothing in reg. 6(2), or for that matter in any other part of the Police (General) Regulations, 1958 to 1966, about a constable being given an opportunity of being heard before his service is terminated; but in the case just

cited the Court quoted a passage from its judgment in *Kalisperas* and *Republic*, 3 R.S.C.C. 146, at p. 151, which reads:

> " It is, of course, possible for transfers to be made, in varying degrees, both for reasons of misconduct and other reasons at the same time. In such cases it may not always be easy to draw the line between disciplinary and other transfers. The test to be applied in such cases it to ascertain the essential nature and predominant purpose of the particular transfer. In case of doubt whether a transfer is disciplinary or not then such doubt ought to be resolved by treating the transfer in question as being disciplinary in order to afford the public officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters"

and proceeded thus:

> " What has been stated in the above case concerning a transfer applied with equal, if not greater, force to the case of the termination of the services of a public officer, because then the consequences for such public officer are much more serious, irrespective of whether such officer is established or unestablished."

The passage cited by counsel for the Respondent comes next after that just set out. Now the first two passages, read, as they must be, as one, contain, so far as this case is concerned, the following propositions:

1. When the service of a public officer is terminated and there is a doubt as to "the essential nature and predominant purpose" of the termination, the doubt ought to be resolved by treating the termination "as being disciplinary in order to afford the public officer concerned the safeguards ensured to him through the appropriate procedure applicable to disciplinary matters".

2. In cases where the termination must be treated as disciplinary the officer concerned must be given an opportunity of being heard before the termination is decided upon.

3. The above principles apply to every public officer, established or unestablished, even in cases where the

reasons for such termination are "so overwhelming as to render it improbable that anything will be forthcoming from him which could render (the termination) unnecessary".

Presumably the passage following the two that I have just dealt with has been cited because of the words "and the more so....." to its end—on the view that those words show that the principle to which it refers is not applicable to members of the police. Such a view, however, would be based on a misreading of the passage in which they occur: a statement that strict adherence to a particular principle is "more necessary in one set of circumstances than in another" does not mean that it is *unnecessary* in the latter circumstances, but only that it is *less necessary*. Indeed, less than three months earlier the same Court in *Haros* v. *Republic*, 4 R.S.C.C. 39, had held that the principle in question was applicable, under Art. 12 of the Constitution, "in all cases of disciplinary control in the domain of public law" and applied it to the case of a member of the police whose appeal to the Chief of Police had been dismissed under reg. 20 of the Police (Discipline) Regulations, 1958 to 1960, without his being given an opportunity of being heard: see the report of the case at p. 44, letters D and E. It follows that, unless the fact that at the time of the subject decision the Applicant was a probationer makes any difference, his service could not lawfully be terminated without his being given an opportunity of being heard. Does that fact then make any difference? It has not been argued, nor do I see any reason for holding, that proposition 3 does not apply to public officers who are serving on probation in the police.

In view of my conclusions on points (b) and (c) I need not deal with point (a).

For the above reasons I am constrained, notwithstanding the Applicant's record, to hold that the subject decision must be annulled. It is therefore annulled, and the Chief of Police must reconsider the matter after giving the Applicant an opportunity of being heard. In the circumstances I make no order as to the costs.

Sub judice decision annulled; no order as to costs.