IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LEFKOS GEORGHIADES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE PUBLIC SERVICE COMMISSION,

Respondent.

(*Case No.* 179/69).

Public Officers—Disciplinary offences and disciplinary proceedings—Investigation—Section 80(*b*) *of the Public Service Law,* 1967 (*Law No.* 33 *of* 1967)—*Officer concerned not heard by his superiors prior to the nomination of the Investigating Officer, by way of a preliminary step to the investigation—Course adopted a proper one in view of sections* 80, 81 *and* 82 *of the Public Service Law* (supra) *and Regulations* 1 *to* 4 *in Part I of the Second Schedule to the said Law—Section* 45 *of said same Law inapplicable—Rules of natural justice do not require a course different from the one adopted in the present case at that stage—Cf.* infra.

Public Officers—Disciplinary offences and disciplinary proceedings—Investigation under section 80(*b*) *of the Public Service Law,* 1967 (*Law No.* 33 *of* 1967)—*Carried out substantially in a manner compatible with Regulation* 4 *in Part I of the Second Schedule to the said Law—No contravention of rules of natural justice—Cf.* supra; *cf.* infra.

Disciplinary offences and disciplinary proceedings—Charges—Framing of disciplinary charges—Not necessary to refer to any specific legal provisions—Impossible to envisage and cover by specific provisions all contingencies in which a public officer may commit a disciplinary offence—No material error in relation to the disciplinary charges brought against the Applicant in the instant case, which could lead to annulling his disciplinary conviction in respect thereof—Cf. infra.

Disciplinary proceedings—Natural justice—In such proceedings "The hearing of the case shall proceed, as nearly as may be, in the

same manner as the hearing of a criminal case in a summary trial"—Regulation 3 *in Part III of the Second Schedule to the Public Service Law,* 1967 (supra)—*Cf. Article* 12.5 *of the Constitution—Rules of natural justice applicable to disciplinary proceedings—*Audi alteram partem *rule—Annulment of the* sub judice *decision of the Respondent Public Service Commission concerning the disciplinary punishment of the Applicant, through its failure to apply effectively the said rule—In that Applicant or his counsel were not furnished with copies of the reports of the two Investigating Officers and the documents attached thereto, which were duly sent to the Respondent Commission under section* 82(1) *of the Public Service Law,* 1967—*Ignorance by the Applicant at the material time (i.e. prior to his said disciplinary conviction) of the full contents of these reports and other said documents severely handicapped the exercise by him of his right to be heard in his own defence—And if such right is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him—And he must know what evidence has been given and what statements have been made affecting him—And then he must be given the opportunity to correct or contradict them—And such deficiency of natural justice as occurred in the present case has not been made good by subsequent proceedings—Cf.* infra.

Disciplinary proceedings—Disciplinary punishment imposed on Applicant by the Respondent Commission—Annulled for a further reason (Cf. supra) *viz. through the Commission having conducted the relevant proceedings in a manner inconsistent with the combined effect of section* 82(1) *of the said Public Service Law,* 1967 *and Regulation* 3 *in Part III of the Second Schedule thereto—In that evidence in support of the disciplinary charges brought against the Applicant, forwarded to the Commission under section* 82(1) *of the said Law* (supra) *were before the Commission but not within the knowledge of the Applicant and his counsel—Cf.* supra; *cf.* infra.

Disciplinary proceedings—The rule of "due inquiry" preceding the taking of administrative decisions—In the instant case the sub judice *disciplinary punishment was annulled for a third reason (cf.* supra)—*In that it has been reached without "due inquiry" because of the failure of the Respondent Commission to study the reports and documents forwarded to it under section* 82(1) *of the Law, as aforesaid* (supra)—*And, also, in that by not making available to the Applicant all the material before it (i.e. the aforesaid reports of the Investigating Officers and the documents*

attached thereto, supra), *the Respondent Commission deprived itself of the opportunity of having before it as complete an explanation as the Applicant could possibly have given in trying to exculpate himself, had he known all such material.*

Natural justice—The rules of natural justice—Applicable to disciplinary proceedings concerning public officers—See supra.

Natural justice—The rules of natural justice—Inter alia, *the rule* audi alteram partem—*It must be effectively applied—Necessary implications of the principle—See* supra.

"Due inquiry"—The rule that "due inquiry" is essential for the validity of administrative decisions—Necessary implications of the rule—See supra.

In this case the Applicant complains against his demotion by virtue of a decision of the Respondent Public Service Commission, to Counsellor, Grade A (Consul-General A) from the rank of Ambassador in the service of the Ministry of Foreign Affairs. The decision in question was reached on April 30, 1969, as a result of disciplinary proceedings instituted against the Applicant under section 80(b) of the Public Service Law, 1967 (Law No. 33 of 1967). (Note: The whole text of the said section 80 is quoted *post* in the judgment). The gist of the disciplinary charges preferred against the Applicant was that, while he was the Ambassador of the Cyprus Republic, in Moscow, U.S.S.R. he acted in his official capacity and in connection with certain financial transactions involving foreign exchange etc. etc. in a manner inconsistent with his duties, responsibilities and status as a public officer and a diplomatic representative of the Republic of Cyprus.

The Applicant, having raised unsuccessfully a number of points (see *infra* under I to III) succeeded eventually on his contention (see *infra* under IV) that at no stage prior to his disciplinary conviction in question was he furnished with copies of the relevant reports of the two investigating officers, including the documents attached thereto, whereas all these documents were duly forwarded to the Respondent Public Service Commission under section 82(1) of the Public Service Law, 1967.

Annulling the *sub judice* decision, the Court:-

Held, I: Regarding the complaint of the Applicant that during all the period of time, from the moment when it first came to

the notice of his superiors that he was allegedly guilty of conduct constituting disciplinary offences and until he was given an opportunity of being heard by the investigating officers Messrs. Paschalis and Ioannides, appointed for the purpose by the Council of Ministers under regulation 1 *in Part I of the Second Schedule to the Public Service Law,* 1967 (*Law No.* 33 *of* 1967) *he was not given by his superiors the chance to try to exculpate himself, and thus, possibly avoid the institution of disciplinary proceedings against him before the Respondent Commission:–*

(1) In support of this contention reliance has been placed on section 45 of the Public Service Law, 1967 (Note: Section 45 is fully quoted *post* in the judgment). In my view section 45 is, in the light of its text and object, obviously not applicable to a situation such as the one under consideration.

(2) Moreover, it is clear from sub-section (2) of section 81 (Note: Section 81 is quoted in full *post* in the judgment) that only after it appears, consequent upon a departmental inquiry, that a disciplinary offence has been committed is the officer concerned to be informed of the *prima facie* case made against him and to be given an opportunity of being heard.

(3) Lastly, when section 80 of the said Law, regulations 1–4 of Part I of the Second Schedule to that Law and section 82 of the same Law are read together (see the text of those sections and regulations quoted in full *post* in the judgment), it is quite clear that the officer concerned is not to be given an opportunity of being heard, by way of a preliminary step to his disciplinary trial by the Public Service Commission, except at the stage of the investigation carried out in order to ascertain whether disciplinary charges are to be brought against him.

(4) On the other hand, having in mind that the Applicant was given an opportunity of being heard at the preliminary stage, when the matter of the commission by him of any disciplinary offence was still being investigated by the two investigating officers appointed for the purposes of Part I of the Second Schedule to the said Law (*supra*), I cannot say that it was required by the relevant rule of natural justice that he should have been afforded an earlier opportunity of exculpating himself, even before it was decided to investigate into the commission of any disciplinary offence by him through the procedure laid down in the said Part I.

Held, II: Regarding the Applicant's contention that one of the investigating officers Mr. Paschalis, did not carry out his duties

properly, in that he failed to comply with the provisions of regulation 4 of Part I of the Second Schedule to the Public Service Law, 1967 (Law No. 33 of 1967). (Note: This regulation 4, which is one of the regulations dealing with the investigation of disciplinary offences by the investigating officers, reads as follows: "4. The officer concerned shall be entitled to know the case against him and shall be given an opportunity of being heard". See the text of these regulations post in the judgment):

(1) The essence of the Applicant's complaint in this respect is that Mr. Paschalis (*supra*) did not show to him the statements obtained in the course of the investigation, nor did he even tell the Applicant who the makers of such statements were. Having perused all the relevant material before me, I am of the view that in the course of this exhaustively detailed process of the investigation in question, including two interviews, the Applicant came "to know the case against him" to such an extent as to amount to substantial compliance with the requirements laid down by the aforementioned regulation 4.

(2) Considering further that Mr. Paschalis, as an investigating officer, had neither been called upon nor was he entitled to decide about the guilt or innocence of the Applicant from a disciplinary point of view, but he was merely investigating into actions of the Applicant in order to prepare a report on the basis of which the Attorney-General would advise the Minister of Foreign Affairs whether or not the Applicant might be charged disciplinarily, for trial before the Respondent Public Service Commission, I am of the view that, in the circumstances, there has not been, either, any contravention of the principles of natural justice due to the manner in which Mr. Paschalis has conducted his investigation.

Held, III: Regarding the Applicant's submission that the disciplinary charges brought against him were too vague and that, in particular, they did not specify the legal provisions on which they were based:

(1) In my opinion the charges preferred against the Applicant were framed with sufficient certainty to enable him to defend himself.

(2) (a) Nor was it necessary to refer in relation thereto, to any specific legal provisions.

(b) It is well settled in administrative law that conduct of a public officer, which is incompatible with his responsibilities,

duties or status as such, may be found to amount to a disciplinary offence even if there is no particular legal provision prohibiting such conduct; it is, really, not possible to envisage and cover by specific provisions all contingencies in which a public officer may commit a disciplinary offence (See, *inter alia*, Πορίσματα Νομολογίας τοῦ Συμβουλίου Ἐπικρατείας 1929–1959, σ. 367 (Conclusions from the case—law of the (Greek) Council of State 1929–1959 p. 367); the decision of the Greek Council of State No. 367/1934; Kyriacopoulos on Greek Administrative Law, 4th ed. Vol. Γ p. 280; Odent on Contentieux Administratif 1965–1966 p. 1342).

(3) On the basis of the foregoing I can find no material error in relation to the disciplinary charges brought against the Applicant which could lead me to annulling his disciplinary conviction in respect thereof.

Held, IV: Regarding the complaint of the Applicant that at no stage, prior to his disciplinary conviction, was he furnished with copies of the reports of the two investigating officers, including the documents attached thereto and the statements obtained from various persons by the said investigating officers:

(1) (a) It is plainly obvious that the said material (i.e. the report of the investigators as well as the evidence in support) has to be forwarded to the Public Service Commission in relation to the disciplinary proceedings before it. (Cf. section 82(1) of the Public Service Law, 1967). Moreover, under regulation 3 in Part III of the Second Schedule to the said Law, in such proceedings "the hearing of the case shall proceed, as nearly as may be, in the same manner as the hearing of a criminal case in a summary trial."

(b) Even though the said regulation 3 may not be definitely taken as rendering applicable to disciplinary proceedings the provisions of Article 12, paragraph 5, of the Constitution, in the same way in which they are applicable to criminal proceedings, there can be no doubt that the rules of natural justice, as incorporated therein, should be complied with in disciplinary proceedings, because of the nature of such proceedings (see, *inter alia, Morsis and The Republic*, 4 R.S.C.C. 133, at p. 137); and I would add that it is, indeed, well settled in administrative law that, in general, in disciplinary proceedings there are followed, to a considerable extent, principles applicable to criminal proceedings (see *inter alia*, Traité de Contentieux Administratif by Auby and Drago (1962) Vol. III, p. 132 para. 1231; Odent on Contentieux Administratif 1965–1966 p. 1335).

(2) (a) One of the rules of natural justice which is applicable to disciplinary proceedings is the *audi alteram partem* rule viz. that the person charged should have the opportunity of being heard in his own defence; and "if this right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him; he must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them". (See *B. Surinder Singh Kanda* v. *Government of the Federation of Malaya* [1962] A.C. 322, at p. 337 per Lord Denning). In the *Kanda* case (*supra*) it was held, *inter alia,* that the failure to supply to the Appellant a copy of a prejudicial to him report of a board of inquiry, which was sent to the organ which convicted disciplinarily the Appellant, amounted to a denial of natural justice.

(b) Actually, the need for sufficient knowledge by a person of the case which he has to meet has been stressed in a considerable number of English cases, of a disciplinary or otherwise of a public law nature; it is sufficient, I think, to refer to some of them only, such as *R.* v. *Architects' Registration Tribunal, Ex parte Jaggar* [1945] 2 All E.R. 131; *Stafford* v. *Minister of Health* [1946] K.B. 621; *Reg.* v. *Deputy Industrial Injuries Commissioner, Ex parte Jones* [1962] 2 Q.B. 677; and *Ridge* v. *Baldwin* [1964] A.C. 40, in which the *Kanda* case (*supra*) was followed (see the judgment of Lord Morris of Borth-y-Gest at p. 114).

The position is similar in Greece (see Kyriacopoulos *supra*, at p. 299) and in France (see, Traité Élémentaire de Droit Administratif by A. Laubadére, 4th ed. Vol. 2 p. 101, para. 172; also La Fonction Publique et Ses Problémes Actuels, by Silvera (1969) p. 398, para 368). In both these countries there exist legal provisions requiring that a person facing disciplinary charges should, before defending himself against them, come to know of the contents of the relevant dossier; and it is abundantly clear that such provisions incorporate what is, in effect, a basic general principle of law (see Laubadére, *supra*, at p. 99 para. 168; Silvera *supra* at p. 398 para. 368).

(c) I have no difficulty in holding that such principle is also applicable to disciplinary proceedings in Cyprus. It is a derivative of the "fairness" concept under the rules of natural justice, as well as, by implication, of the relevant provisions

of the aforesaid Public Service Law, 1967 (Law No. 33 of 1967); moreover, it is to be derived, by way of guidance, from the relevant legislation in Greece and France (see in this respect, *Frangos and The Republic*, reported in this Part at p. 312, *ante*); and as a matter of fact, I think that it would be most desirable if such principle were put in a precise statutory text, here too, by an appropriate addition to the provisions of the aforementioned Public Service Law, 1967.

(3) (a) In the present case it is not in dispute that the contents of the reports of the two said investigating officers (as well as the statements obtained by them in the course of their investigation) never came to the knowledge of the Applicant before his disciplinary conviction by the Respondent Commission. Moreover considering the particular circumstances of this case, I have found no difficulty in concluding that ignorance by the Applicant, at the material time, of the full contents of the said documents did severely handicap the exercise by him of his right to be heard in his own defence; and that in view of this ignorance, his right to be heard in his own defence was not really worth much (see in this respect, the already quoted dictum of Lord Denning in the *Kanda* case, *supra*).

(b) Therefore, in the light of the fact that one of the basic rules of natural justice, that of *audi alteram partem*, has not been effectively applied in the course of the disciplinary proceedings against the Applicant, I have been led to the conclusion that the *sub judice* decision of the Respondent Commission has to be annulled, as having been reached in a manner contrary to law.

(4) There is, secondly, another reason, based on relevant provisions of the said Public Service Law, 1967, for which the *sub judice* decision has to be annulled. It is this: The aforementioned documents were all duly forwarded to the Respondent Public Service Commission under the provisions of section 82(1) of the said Law; on the other hand, as already stated, regulation 3 in Part III of the Second Schedule to the same Law provides that the hearing of a disciplinary case before the Respondent Commission shall proceed, as nearly as may be, in the same manner as the hearing of a criminal case in a summary trial. But I have not known of any summary trial of a criminal case at which there was anything placed before the trial Judge without it being, too, within the knowledge of

the accused person and his counsel; and yet this is what has happened on this occasion, in the sense that evidence in support of the charges brought against the Applicant were before the Respondent Commission (the disciplinary tribunal) *but not within* the knowledge of the Applicant and his counsel.

(5) (a) There is a third reason for which the decision complained of has to be annulled: It is because, notwithstanding the very lengthy disciplinary trial, the *sub judice* decision of the Respondent Commission was reached without "due inquiry". That a "due inquiry" is essential for the validity of any administrative decision is a fundamental rule, the importance of which has been repeatedly stressed (see the long series of relevant case-law from *Photos Photiades and Co* and *The Republic*, 1964 C.L.R. 102, up to very recently *Nicolaou* and *The Republic*, reported in this Part at p. 250 *ante*); and such inquiry is no doubt necessary in relation, also, to disciplinary matters (see, *inter alia*, *General Medical Council* v. *Spackman* [1943] A.C. 627; *Fox* v. *General Medical Council* [1960] 3 All E.R. 225, at p. 227; and *Sloan* v. *General Medical Council* [1970] 2 All E.R. 686).

(b) Counsel for the Respondent has conceded that the Respondent Commission ought to have studied for the purposes of the disciplinary process against the Applicant, the reports of the two investigating officers and the documents attached thereto; but he has argued that its failure to do so has not, in this case, materially affected the said process.

I cannot accept this argument as a valid one because, *inter alia*, nobody can tell for certain whether the study of the said reports and documents would or would not have led the Commission to decide that there was need to inquire further into any material aspect of the case before it.

(c) Moreover, the Commission's inquiry cannot, in any case, be treated as having been a due one, because by not making available to the Applicant all the material before it (i.e. the said reports and other documents attached thereto), the Respondent Commission deprived itself of the opportunity of having before it as complete an explanation as the Applicant could have given, in trying to exculpate himself, if he had known all such material (see, *inter alia*, *Iordanou* and *The Republic* (1967) 3 C.L.R. 245).

Held, V.: Conclusion:

(1) (a) For all the above reasons I hold that the *sub judice* decision of the Respondent Commission has to be declared *null* and *void* and of no effect whatsoever.

(b) It is now up to the Commission to revert to the disciplinary matters concerning the Applicant in the light of this judgment.

(2) But I have decided to make no order as to costs because though the Applicant succeeded in this recourse, he has been found wrong on some issues which he has raised and which have taken a lot of the time of this Court.

Sub judice decision annulled.
No order as to costs.

Cases referred to:

Russell v. *Duke of Norfolk* [1949] 1 All E.R. 109, at p. 118;

University of Ceylon v. *Fernando* [1960] 1 All E.R. 631 at p. 637;

Wiseman v. *Borneman* [1969] 3 All E.R. 275 at pp. 280 to 282;

Sloan v. *General Medical Council* [1970] 2 All E.R. 686 at p. 688;

B. Surinder Singh Kanda v. *Government of the Federation of Malaya* [1962] A.C. 322 at p. 337, per Lord Denning;

R. v. *Architects' Registration Tribunal, Ex Parte Jaggar* [1945] 2 All E.R. 131;

Stafford v. *Minister of Health* [1946] K.B. 621;

Regina v. *Deputy Industrial Injuries Commissioner, Ex Parte Jones* [1962] 2 Q.B. 677;

Ridge v. *Baldwin* [1964] A.C. 40 at p. 114;

Board of Education v. *Rice* [1911] A.C. 179 at p. 182;

Leary v. *National Union of Vehicle Builders* [1970] 2 All E.R. 713 and the cases referred to therein;

Walter Annamunthodo v. *Oilfields Workers' Trade Union* [1961] A.C. 945;

General Medical Council v. *Spackman* [1943] A.C. 627 at p. 644 per Lord Wright;

Fox v. *General Medical Council* [1960] 3 All E.R. 225 at p. 227;

Morsis and The Republic, 4 R.S.C.C. 133 at p. 137;

Photos Photiades and Co. and The Republic, 1964 C.L.R. 102 and the cases cited therein;

Nicolaou and The Republic (reported in this Part at p. 250 *ante*);

Iordanou and The Republic (1967) 3 C.L.R. 245;

Frangos and The Republic (reported in this Part at p. 312 *ante*);

Decision of the Greek Council of State No. 376/1934;

Decision of the French Council of State: arret, Moreau, 31 Mai, 1968;

Books referred to: Conclusions from the Case-Law of the Council of State (in Greece) 1929–1959 p. 367 (Πορίσματα Νομολογίας Συμβουλίου Ἐπικρατείας 1929–1959 σ. 367);

Kyriacopoulos on Greek Administrative Law 4th ed. 3rd Vol. p. 280 (Κυριακοπούλλου, Ἑλληνικὸν Διοικητικὸν Δίκαιον, ἔκδ. 4η Τόμος Γ. σ. 280);

Odent, on Contentieux Administratif 1965–1966, p. 1335 and p. 1342;

A. Laubadére, Traité Élémentaire de Droit Administratif, 4th ed. Vol. 2 p. 101 para 172;

Silvera, La Fonction Publique et Ses Problémes Actuels, 1969 p. 398 para, 368 and p. 403, para 372;

Auby et Drago, Traité de Contentieux Administratif 1962, Vol. III, p. 132 para 1231.

Recourse.

Recourse against the decision of the Respondent to demote Applicant to the rank of Counsellor, Grade A (Consul–General A) from the rank of Ambassador, in the service of the Ministry of Foreign Affairs.

A. HadjiIoannou, for the Applicant.

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

Cur. adv. vult.

The following judgment* was delivered by:

TRIANTAFYLLIDES, J.: In this case the Applicant complains against his demotion, by virtue of a decision of the Respondent Public Service Commission, to Counsellor, grade A (Consul-General, A), from the rank of Ambassador, in the service of the Ministry of Foreign Affairs.

Such decision (see *exhibit AD*) was reached on the 30th April, 1969, as a result of disciplinary proceedings against the Applicant.

There need not be set out verbatim the four disciplinary charges in respect of which the Applicant was punished by the Respondent. It suffices only to state that the Applicant was charged—mainly—that while he was the Ambassador of the Cyprus Republic, in Moscow, U.S.S.R., he acted, in his official capacity in connection with certain financial transactions involving foreign exchange and in the course of buying and selling cine-cameras and cars, in a manner inconsistent with his duties, responsibilities and status as a public officer and a diplomatic representative of Cyprus.

The first matter with which I have to deal in this judgment is the complaint of the Applicant that during all the period of time, from the moment when it first came to the notice of his superiors that he was allegedly guilty of conduct constituting disciplinary offences and until he was given an opportunity of being heard by investigating officers, Mr. P. Paschalis and Mr. A. Ioannides, appointed for the purpose by the Council of Ministers under regulation 1 in Part I of the Second Schedule to the Public Service Law, 1967, Law 33/67, he was not given by his superiors in the Ministry of Foreign Affairs the chance to try to exculpate himself, and, thus, possibly, avoid the institution of disciplinary proceedings against him before the Respondent Commission.

The case of the Applicant was placed before the Commission in view of the provisions of section 80 of Law 33/67; it had been referred to it also earlier—before the promulgation of Law 33/67 on the 30th June, 1967—but after that date the whole process was set in motion all over again under such Law.

Section 80 of Law 33/67 reads as follows:–

* For final judgment on appeal see (1972) 11 J.S.C. 1386 to be reported in due course in (1972) 3 C.L.R.

"80. If it is reported to the appropriate authority concerned that a public officer may have committed a disciplinary offence the appropriate authority shall forthwith –

(a) If the offence is one of those specified in Part I of the First Schedule, cause a departmental inquiry to be made in such manner as the appropriate authority may direct and proceed as provided in section 81:

Provided that, if the appropriate authority is of opinion that, owing to the seriousness of the offence or the circumstances under which it was committed, it should entail a more serious punishment, it may refer the matter to the Commission, in which case it shall proceed under paragraph (b);

(b) in any other case, cause an investigation to be made in the prescribed manner and then proceed as provided in section 82:

Provided that until Regulations are made prescribing the manner of investigation, the Regulations set out in Part I of the Second Schedule apply".

As, quite clearly, the disciplinary offences which, as reported to the appropriate authority (the Minister of Foreign Affairs) the Applicant might have committed, were not amongst those specified in Part I of the First Schedule to Law 33/67, it was necessary to proceed pgainst him in accordance with paragraph (b) of section 80; and, therefore, the aforementioned investigating officers were nominated in order to make investigations in the prescribed manner.

In support of the contention that, before investigating officers were nominated, an opportunity ought to have been given to to the Applicant, in his Ministry, to exculpate himself, reliance has been placed on section 45 of Law 33/67, which reads as follows:–

"45.–(1) Subject to sub-section (2), confidential reports on all officers shall be prepared and submitted to the Commission annually in the prescribed manner and by the date fixed by the Council of Ministers:

Provided that until such date is fixed, the annual confidential reports shall be submitted not later than the 31st day of January in each year.

(2) Confidential reports shall be submitted at six monthly intervals to the Commission on every officer serving on probation. The final report shall be submitted one month before the expiration of the probationary period and shall contain a definite recommendation whether the officer should be confirmed or whether his probationary period should be extended or his service terminated.

(3) Where in any special case the appropriate authority concerned considers that its own views on an officer should be brought to the notice of the Commission, nothing in this Law shall preclude such authority from requiring that the confidential report on such officer be transmitted through it for the expression therein of its own views or from sending to the Commission such views, and in any such case the views of the appropriate authority shall form part of the confidential report on the officer.

(4) The person preparing a confidential report on a particular officer in which the latter is criticised for negligence, failures or improper behaviour in the performance of his duties must, on the submission thereof, communicate to the officer concerned this part of the report.

Within fifteen days of the communication to him, the officer is entitled to require in writting from the competent authority concerned to strike out or modify this part of the report and the competent authority shall consider the matter and decide thereon".

In my view section 45 is, in the light of its text and object, obviously not applicable to a situation such as the one under consideration in this judgment.

Moreover, there are provisions in Law 33/67 which clearly tend to show that an officer who is suspected of a disciplinary offence is not to be heard *prior* to his disciplinary trial, if the matter is to be dealt with summarily by the appropriate authority under section 81 of the Law, or *prior* to the commencement of the investigation by an investigating officer,

if the case is of such a nature that it may have to be referred to the Public Service Commission under section 82 of the Law.

Section 81 of Law 33/67 reads as follows:-

"81.-(1) The appropriate authority concerned shall have power to deal summarily with any disciplinary offences specified in Part I of the First Schedule and to impose any of the punishments specified in Part II of such Schedule.

(2) When, as a result of a departmental inquiry carried out in accordance with paragraph (a) of section 80, it appears to the appropriate authority concerned that a disciplinary offence has been committed which can be dealt with summarily, then the officer concerned shall be informed of the case *prima facie* made against him and shall be given an opportunity of being heard.

(3) After hearing the officer concerned, the appropriate authority concerned may impose any of the punishments set out in Part II of the First Schedule.

(4) Without prejudice to the general power of delegation of the appropriate authority, the appropriate authority may delegate any of its powers under this section to the Head of the Department concerned or to any other senior officer who shall be of a higher rank than the officer concerned".

It is clear from sub-section (2) of section 81 that only after it appears, consequent upon a departmental inquiry, that a disciplinary offence has been committed is the officer concerned to be informed of the case *prima facie* made against him and to be given an opportunity of being heard.

Section 82 of Law 33/67 reads as follows:-

"82.-(1) When an investigation carried out under paragraph (b) of section 80 is completed and the commission of a disciplinary offence is disclosed, the appropriate authority shall forthwith refer the matter to the Commission and shall forward to it -

(a) the report of the investigation;

(b) the charge to be brought signed by the appropriate authority concerned; and

(c) the evidence in support thereof.

(2) Disciplinary proceedings before the Commission shall commence by the preferment of the charge sent by the appropriate authority as in sub-section (1) provided. Within such period as may be prescribed, and until such period is prescribed within two weeks of the date of receipt by it of the charge, the Commission shall cause summons in the prescribed form to be issued to the officer concerned and served upon him in the prescribed manner:

Provided that, until the form and the manner of service of summons are prescribed, the form of summons set out in Part II of the Second Schedule may be used and the manner of service therein provided may be followed.

(3) The hearing of the case before the Commission shall be conducted and completed in the prescribed manner:

Provided that, until Regulations are made in this respect, the Regulations set out in Part III of the Second Schedule shall apply.

(4) In any proceedings before the Commission under this Part the officer concerned may be represented by counsel of his own choice".

This section has to be read together with section 80 of the same Law (which has already been quoted in this judgment) and with Part I of the Second Schedule to the Law, which reads as follows:-

" *Regulations relating to the investigation of offences*

1. The appropriate authority concerned shall, as expeditiously as possible, nominate one or more officers of its Ministry or Office (in this Part referred to as 'the investigating officer') to conduct the investigation. The investigating officer shall be a senior officer who shall be of a higher rank than the officer concerned:

Provided that if in any case the appropriate authority considers that it would not be possible, practicable or advisable to nominate an investigating officer from its Ministry or Office, it shall refer the matter to the Council of Ministers which shall nominate a suitable officer to conduct the investigation.

2. The investigation shall be carried out as expeditiously as possible and shall in any case be completed not later than thirty days from the date of the direction for investigation.

3. In carrying out an investigation the investigation officer shall have power to hear any witnesses or to obtain written statements from any person who may have knowledge of any of the facts of the case and any such person shall give all information within his knowledge and shall sign any statement so given after its having been read out to him.

4. The officer concerned shall be entitled to know the case against him and shall be given an opportunity of being heard.

5. After the completion of the investigation the investigating officer shall forthwith report his conclusion to the appropriate authority giving full reasons in support thereof and submitting all relevant documents.

6. On receiving the report of the investigating officer, the appropriate authority shall forthwith refer it, with all documents submitted, to the Attorney-General of the Republic together with its views thereon for his advice.

7. The Attorney-General of the Republic shall, with all reasonable speed, consider the matter and advise the appropriate authority whether a charge may be brought against the officer and, if so, shall draft the charge.

8. On receiving the charge drafted by the Attorney-General, the appropriate authority shall sign it and transmit it to the Chairman of the Commission with all documents submitted to the Attorney-General of the Republic."

When section 80, regulations 1–4 of Part I of the Second Schedule and section 82 of Law 33/67 are read together it is quite clear that the officer concerned is not to be given an opportunity of being heard, by way of a preliminary step to his disciplinary trial by the Public Service Commission, except at the stage of the investigation carried out in order to ascertain whether disciplinary charges are to be brought against him.

I would even venture to observe that even if there were nothing in Law 33/67 to the contrary effect, it would not be at all proper for a public officer suspected of a disciplinary offence to be told about it prior to the appropriate stage, under the provisions of Law 33/67 already referred to; otherwise the way would be laid open for a possibly adversely disposed superior to harass a subordinate with unfounded accusations so as to make life for him unbearable.

Nor would I, in any case, be prepared to hold that the rules of natural justice require, in this respect, a course different than the one adopted in the case of the present Applicant: The answer to the question as to whether or not such rules—and we are actually concerned here with the "*audi alteram partem*" rule, in other words with the notion of "fairness"—require a certain course of action to be followed does depend to a great extent on the circumstances of the particular case (see, *inter alia*, the judgments of Tucker, L.J., in *Russell* v. *Duke of Norfolk* [1949] 1 All E.R. 109 at p. 118, of Lord Jenkins in *University of Ceylon* v. *Fernando* [1960] 1 All E.R. 631 at p. 637, of Lord Guest in *Wiseman* v. *Borneman* [1969] 3 All E.R. 275 at p. 280 as well as of Lord Donovan in the same case at p. 282, and of Lord Guest in *Sloan* v. *General Medical Council* [1970] 2 All E.R. 686 at p. 688).

Having, particularly, in mind that the Applicant was given an opportunity of being heard at the preliminary stage, when the matter of the commission by him of any disciplinary offence was still being investigated by the two investigating officers appointed for the purposes of Part I of the Second Schedule to Law 33/67, I cannot say that it was required by the relevant rule of natural justice that he should have been afforded an earlier opportunity of exculpating himself, even before it was decided to investigate into the commission of any disciplinary offence by him by means of the procedure laid down in the said Part I; to use the words of Lord Guest in the *Wiseman* case (*supra*, at p. 281) "there is nothing so unfair" in what the Applicant complains of "as to entitle the Court to say that the principles of natural justice were not followed."

I shall deal next with the Applicant's contention that one of the two investigating officers, Mr. Paschalis, did not carry out his duties properly, in that he failed to comply duly with the provisions of regulation 4 of Part I of the Second Schedule to Law 33/67; the essence of the Applicant's complaint in

this respect is that Mr. Paschalis did not divulge to him the whole case against him, especially as Mr. Paschalis did not show to the Applicant the statements obtained in the course of the investigation, nor did he even tell the Applicant who the makers of such statements were; instead—it is complained of by the Applicant—Mr. Paschalis prepared a form of questionnaire, which was, allegedly, not fully comprehensive and accurate in every respect, and invited the Applicant to reply thereto.

Having perused all the relevant material before me and given due weight to all arguments in relation to this point, I am of the view that there has been substantial compliance, by Mr. Paschalis, with the provisions of the said regulation 4:

The questionnaire in question is set out in a letter addressed to the Applicant by Mr. Paschalis on the 24th April, 1968, (see document No. 5 attached to *exhibit A*) and containing *also* a very comprehensive description of the case against the Applicant. It is true that there were not attached thereto copies of the statements obtained by Mr. Paschalis, nor did he disclose to the Applicant the names of the persons who made such statements, but I do not think that there has been in this connection a contravention, in a material respect, of regulation 4.

Moreover, after the Applicant had replied in writing, at very great length, to Mr. Paschalis, (by means of a document dated the 26th May, 1968, and received by Mr. Paschalis on the 29th May, 1969) the latter, on the 31st May, 1968, and on the 3rd and 4th June, 1968, interviewed the Applicant in order to obtain further explanations from him on certain points and the Applicant gave such explanations, again at great length, first orally and then in writing, in a document which he handed to Mr. Paschalis on the 11th June, 1968 (see the documents attached to *exhibit A*).

I have no doubt that in the course of this exhaustively detailed process the Applicant came "to know the case against him" to such an extent as to amount to substantial compliance with the requirements laid down by the aforementioned regulation 4.

Also, with all these in mind, as well as because Mr. Paschalis, as an investigating officer, had neither been called upon nor was he entitled to decide about the guilt or innocence of

the Applicant from a disciplinary point of view, but he was merely investigating into actions of the Applicant in order to prepare a report on the basis of which the Attorney-General would advise the Minister of Foreign Affairs whether or not the Applicant might be charged disciplinarily, for trial by the Respondent Commission, I am of the view that, in the circumstances, there has not been, either, any contravention of the principles of natural justice due to the manner in which Mr. Paschalis has conducted his investigation.

I shall examine now the submission of the Applicant that the disciplinary charges brought against him were too vague and that, in particular, they did not specify the legal provisions on which they were based.

In my opinion the charges brought against the Applicant were framed with sufficient certainty to enable him to defend himself against them.

Nor was it necessary to refer, in relation thereto, to any specific legal provisions.

It is well settled in administrative law that conduct of a public officer, which is incompatible with his responsibilities, duties or status as such, may be found to amount to a disciplinary offence even if there is no particular legal provision prohibiting such conduct; it is, really, not possible to envisage and cover by specific provisions all contingencies in which a public officer may commit a disciplinary offence. Reference might be made, in this respect, to, *inter alia*, Πορίσματα Νομολογίας τοῦ Συμβουλίου τῆς Ἐπικρατείας 1929–1959, σ. 367. (Conclusions form the case-law of the Council of State in Greece 1929–1959, p. 367); to the decision of the Greek Council of State in Case 376/34; to Κυριακοπούλου Ἑλληνικὸν Διοικητικὸν Δίκαιον, ἐκδ. 4η, Τόμ. Γ, σ. 280) (Kyriacopoulos on Greek Administrative Law, 4th ed., 3rd Vol., p. 280); and to Odent on Contentieux Administratif 1965–1966 p. 1342.

On the basis of the foregoing I can find no material error, in relation to the disciplinary charges brought against the Applicant, which could lead me to annulling his disciplinary conviction in respect thereof.

The next complaint of the Applicant which I have to consider is that at no stage, prior to his disciplinary conviction, was he, or counsel appearing for him before the Respondent

Commission, furnished with copies of the reports of the two investigating officers, Mr. Paschalis and Mr. Ioannides, and of the documents attached thereto, including the statements obtained from various persons by the said investigating officers; nor was he furnished with copies of other, apparently relevant, documents, which were placed before the Commission prior to the promulgation of Law 33/67 and the institution of disciplinary proceedings against the Applicant thereunder.

There is no *express* provision to be found in Law 33/67 as to what the Public Service Commission is expected to do with "the report of the investigation" or with "the evidence in support" of the charges to be brought against a public officer, after such material has been forwarded to the Commission, as it has to be forwarded by virtue of the provisions of section 82(1). It is, however, plainly obvious that the said material has to be forwarded to the Commission in relation to the disciplinary proceedings before it.

Regarding such proceedings it is provided by regulation 3 in Part III of the Second Schedule to Law 33/67 that " The hearing of the case shall proceed, as nearly as may be, in the same manner as the hearing of a criminal case in a summary trial".

I shall deal with the complaint in question of the Applicant from, first, the point of view of the rules of natural justice:

In my opinion, even though regulation 3, above, may not be definitely taken as rendering directly applicable to disciplinary proceedings the provisions of Article 12.5 of the Constitution, in the same way in which they are applicable to criminal proceedings, there can be no doubt that the rules of natural justice, as incorporated therein, should be complied with in disciplinary proceedings, because of the nature of such proceedings (see, *inter alia, Morsis* and *The Republic*, 4 R.S.C.C. 133 at p. 137); and I would add that it is, indeed, well settled in administrative law that, in general, in disciplinary proceedings there are followed, to a considerable extent, principles applicable to criminal proceedings (see, *inter alia*, Traité de Contentieux Administratif by Auby and Drago (1962) Vol. III, p. 132, para. 1231; Odent, *supra*, at p. 1335).

One of the rules of natural justice which is applicable to disciplinary proceedings is the *audi alteram partem* rule, viz. that the person charged should have the opportunity of being

heard in his own defence in a manner in which such right shall be a real right worth what it is meant to be.

In delivering the judgment of the Privy Council, in England, in a case involving disciplinary sanction, that of *B. Surinder Singh Kanda* v. *Government of the Federation of Malaya* [1962] A.C. 322, Lord Denning had this to say (at p. 337):-

> " The rule against bias is one thing. The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pi lars supporting it. The Romans put them in the two maxims: *Nemo judex in causa sua*: And *Audi alteram partem.* They have recently been put in the two words, Impartiality and Fairness.....
>
> If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him: And then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn, L.C. in *Board of Education* v. *Rice** down to the decision of their Lordships' Board in *Ceylon University* v. *Fernando.*** It follows, of course, that the Judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The Court will not inquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood of prejudice. The risk of it is enough."

In the *Kanda* case it was held, *inter alia*, that the failure to supply to the Appellant a copy of a prejudicial to him report of a board of inquiry, which was sent to the organ which convicted disciplinarily the Appellant, amounted to a denial of natural justice.

Actually, the need for sufficient knowledge by a person of the case which he has to meet has been stressed in a considerable number of English cases, of a disciplinary or

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* [1911] A.C. 179, 182.

** see *supra.*

otherwise of a public law nature; it is sufficient, I think, to refer to some of them only, such as *R.* v. *Architects' Registration Tribunal, Ex parte Jaggar* [1945] 2 All E.R. 131; *Stafford* v. *Minister of Health* [1946] K.B. 621; *Regina* v. *Deputy Industrial Injuries Commissioner, Ex parte Jones* [1962] 2 Q.B. 677; and *Ridge* v. *Baldwin* [1964] A.C. 40, in which the *Kanda* case (*supra*) was followed (see the judgment of Lord Morris of Borth-y-Gest at p. 114).

The position is similar in Greece (see Kyriacopoulos, *supra*, at p. 299) and in France (see Traité Élémentaire de Droit Administratif by A. de Laubadére, 4th ed., Vol. 2, p. 101, para. 172; also, La Fonction Publique et Ses Problémes Actuels by Silvera (1969) p. 398, para. 368). In both these two countries there exist legal provisions requiring that a person facing disciplinary charges should, before defending himself against them, come to know of the contents of the relevant dossier; and it is abundantly clear that such provisions incorporate what is, in effect, a basic general principle of law (see Laubadére, *supra*, p. 99, para. 168; and Silvera, *supra*, p. 398, para. 368).

I have no difficulty in holding that such principle is, also, applicable to disciplinary proceedings in Cyprus. It is a derivative of the "fairness" concept under the rules of natural justice, as well as, *by implication*, of the relevant provisions of Law 33/67; moreover, it is to be derived, by way of guidance, from the relevant legislation in Greece and France (see, in this respect, *Frangos* and *The Republic* (reported in this Part at p. 312 *ante*); and, as a matter of fact, I think that it would be most desirable if such principle were put in a precise statutory text, here too, by an appropriate addition to the provisions of Law 33/67.

In the present case it is not in dispute that the contents of the reports of the two investigating officers, Mr. Paschalis and Mr. Ioannides; as well as the statements obtained by them in the course of their investigations (see *exhibits A* and *B*), never came to the knowledge of the Applicant, or his counsel, before the *sub judice* disciplinary conviction of the Applicant by the Respondent Commission; it is a fact, however, that the Applicant and his counsel came to know, by chance, before such conviction, that the report of Mr. Ioannides was, in a certain way, not unfavourable for the Applicant (see the final addresses of counsel before the Commission on the 6th

February, 1969, and before this Court on the 26th October, 1970).

I am quite well aware that in France the view has been taken that a report resulting from a preliminary investigation by another organ, not being binding on the competent disciplinary organ, need not be communicated to the public officer concerned before the decision of the latter organ (see Silvera, *supra*, p. 403, para. 372, as well as the decision of the French Council of State in the case of *Moreau*, on the 31st May, 1968). On the other hand, in England, it was held in the *Kanda* case (*supra*) that such a report ought to have been disclosed.

The actual situation in the present case is clearly distinguishable from the analogous position in disciplinary proceedings in France:

There the communication to the public officer concerned of the preliminary investigation report may, quite rightly, not be necessary because such officer is in any case in a position to know the whole case against him, in other words the material on which such report has been based, due to the fact that the relevant dossier is made available to him for the purpose of the preparation of his defence.

In the present instance the Applicant, when he made his defence before the Respondent Commission, did not know of the written statements on the basis of which the reports of the two investigating officers had been prepared; and without knowledge of this material, which had been forwarded, under the aforementioned provisions of Law 33/67, to the Commission, his right to be heard in his own defence was not really worth much (see, in this respect, the already quoted dictum of Lord Denning in the *Kanda* case, *supra*).

I would go even further and say that in, at any rate, the particular circumstances of this case, it was required, by the relevant principle of natural justice, that the Applicant when defending himself before the Commission should have known the actual contents of the reports of the two investigating officers. This is so in view of the nature of such reports: The report of Mr. Paschalis—whose good faith in this matter is not to be doubted in the least—appears to me to have overshot the limits of the requirements prescribed by regulation 5 in Part I of the Second Schedule to Law 33/67 (viz. that it should have contained his conclusion with full reasons in

support thereof) and to be an exposition of elaborate and careful argumentation forcefully establishing the guilt of the Applicant and destroying his credibility. On the other hand the report of Mr. Ioannides—who was at the time the Accountant-General of the Republic and, therefore, in a position to express a view as an expert regarding the financial matters under investigation—appears to be, to a certain limited extent, favourable for the Applicant. Thus, I have found no difficulty in concluding that ignorance by the Applicant, at at the material time, of the full contents of these reports did severely handicap the exercise by him of his right to be heard in his own defence.

Regarding other documents relevant to the charges against the Applicant (see *exhibit AF*)—which were sent to the Commission prior to the promulgation of Law 33/67 and to the commencement *ab initio* of disciplinary proceedings against him under such law—I am, again, of the view that ignorance of their contents by the Applicant, when he was defending himself before the Commission, affected adversely his said right to be heard.

In the light, therefore, of the fact that one of the two basic rules of natural justice, that of *audi alteram partem*, has not been effectively applied in the course of the disciplinary proceedings against the Applicant I have been led to the conclusion that the *sub judice* decision of the Respondent Commission has to be annulled, as having been reached in a manner contrary to law.

Counsel for the Respondent has contended, in this respect, that any possible defect in the proceedings has been cured because the Commission's decision was reached wholly on the basis of evidence adduced in the presence of the Applicant and his counsel.

It is quite correct that a deficiency of natural justice may, depending on the case, be made good by subsequent proceedings (see the judgment of Megarry, J., in *Leary* v. *National Union of Vehicle Builders* [1970] 2 All E.R. 713; and the case-law referred to therein); but, in the present case, the deficiency of natural justice, which I have found to exist, could not be cured by the hearing before the Respondent Commission, because it is exactly such deficiency which prevented the Applicant from exercising effectively his right

to be heard in his own defence at such hearing, in the sense that ignorance of the contents of the reports, statements and other documents, already mentioned in this judgment, prevented his said right from being a right really worth what it should have been (as in the *Kanda* case, *supra*).

In the *Kanda* case it was held, also, that where a rule of natural justice has been violated "The Court will not go into the likelihood of prejudice. The risk of it is enough" (see, also, in this respect *Walter Annamunthodo* v. *Oilfields Workers' Trade Union* [1961] A.C. 945); and it is immaterial, once there has been such a violation, "whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision" (see the judgment of Lord Wright in *General Medical Council* v. *Spackman* [1943] A.C. 627 at p. 644). Anyhow, in the case now before me I am satisfied, on the basis of all relevant material, that because of his ignorance of the contents of the said reports etc. the Applicant has suffered real prejudice and that possibly, though not necessarily, the outcome of the disciplinary proceedings against him might, in whole or in part at least, have been different had he possessed knowledge of such contents at the proper time.

Counsel for the Respondent has stated to the Court that in actual fact the Commission did not take into account, for the purpose of the disciplinary process in question, anything other than the oral evidence given and the documentary exhibits produced during the hearing before it, in the Applicant's and his counsel's presence. But the fact remains that the material which was forwarded to the Commission, as aforesaid, prior to the enactment of Law 33/67, and, later, by virtue of section 82(1) of such Law, was available to all its members and the possibility cannot be reasonably excluded that one or more of its members became influenced by it, through perusing, even at some preliminary stage, such material; moreover, the Applicant was handicapped, in the effective exercise of his right to be heard in defence of himself, through the non-availability to him, at all stages before his disciplinary conviction, of the said material; and, though I have said so earlier, I ought perhaps to stress, by repeating it, that when the application of the rules of natural justice is involved the mere risk of prejudice, due to their not having been duly complied with, is sufficient to lead to the annulment of a

decision reached in a manner vitiated by such non-compliance (see, *inter alia*, the *Annamunthodo* and *Kanda* cases, *supra*).

There is, secondly, another reason, based on relevant provisions of Law 33/67, for which the *sub judice* decision has to be annulled: In my view the disciplinary proceedings against the Applicant were conducted in a manner which was inconsistent with the combined effect of the already referred to section 82(1) of Law 33/67 and regulation 3 in Part III of the Second Schedule to the same Law (which, as stated, provides that the hearing of a disciplinary case before the Respondent Commission shall proceed, as nearly as may be, in the same manner as the hearing of a criminal case in a summary trial). I have not known of any summary trial of a criminal case at which there was anything placed before the Judge trying such case without it being, too, within the knowledge of the accused person and his counsel; and yet this is what has happened on this occasion, in the sense that the evidence in support of the charges brought against the Applicant, which was forwarded to the Respondent Commission in compliance with section 82(1) of Law 33/67, as well as the reports of the two investigating officers, which were likewise forwarded to the Commission, were before the Commission *but not* within the knowledge of the Applicant and his counsel. In my view the proper course for the Commission was to make such evidence, which consisted of the written statements of various persons and of documentary exhibits, part of the record of the hearing before it, because it was forwarded to it in that connection (and under regulation 4(c) in Part III of the Second Schedule to Law 33/67 it could admit evidence which would be "inadmissible in civil or criminal proceedings"); it being understood, of course, that it was open to the Commission to decide, either of its own motion or at the request of a party before it, that any of the said persons should be called to give oral evidence, too, during the hearing before the Commission. Moreover, the reports of the two investigating officers ought to have been made available to Applicant and his counsel (not only, as stated earlier in this judgment, as a matter of natural justice, in the circumstances of this case) but, also, as a matter of law—the said section 82(1) and regulation 3—once they had been forwarded to the Commission, by the complainant Ministry, in relation to the disciplinary proceedings before it, and they were available both to its members and to counsel appearing for such Ministry.

Thus, irrespective of any non-compliance with the *audi alteram partem* rule of natural justice, the Commission's decision was reached contrary to the object and effect of the relevant provisions of Law 33/67.

It is correct that the Applicant and his counsel did not request that the said material be made available in relation to the hearing before the Commission. I do not think, however, that this is a factor which can prevent the annulment of the *sub judice* decision. Because this was not a case in which the Applicant knew that he had the right, under an express provision to that effect—as in France or Greece—to study the contents of the relevant dossier, and yet he neglected to do so (see Silvera, *supra*, at p. 398, para. 368), but a case in which the absence of such an express provision in Law 33/67 prevented both the Applicant and the Commission from knowing clearly what was the exact position in this respect.

A third reason for which the decision of the Commission has to be annulled is that, notwithstanding the very lengthy disciplinary trial, it was reached without "due inquiry":

That a due inquiry is essential for the validity of any administrative decision is a fundamental rule, the importance of which has been repeatedly stressed (see the long series of relevant case-law from *Photos Photiades & Co.* and *The Republic*, 1964 C.L.R. 102, up to, very recently, *Nicolaou* and *The Republic* (reported in this Part at p. 250 *ante*); and such inquiry is no doubt necessary in relation, also, to disciplinary matters (see, *inter alia*, the *Spackman* case, *supra*; the case of *Fox* v. *General Medical Council* [1960] 3 All E.R. 225 at p. 227; and the *Sloan* case, *supra*).

Counsel for the Respondent has conceded that the Commission ought to have studied, for the purposes of the disciplinary process against the Applicant, the reports of the two investigating officers and the documents attached thereto; but he has argued that its failure to do so has not, in this case, materially affected the said process.

I do not think that I can accept his argument, on this point, as a valid one, because, *inter alia*, nobody can tell for certain whether the study of the said reports and documents would or would not have led the Commission to decide that there was need to inquire further into any material aspect of the case before it.

Moreover, the Commission's inquiry cannot, in any case, be treated as having been a due one, because by not making available to the Applicant all the material, which was before it, the Commission deprived itself of the opportunity of having before it as complete explanations as the Applicant could have given, in trying to exculpate himself, if he had known of all such material (see, *inter alia*, *Iordanou* and *The Republic* (1967) 3 C.L.R. 245).

For all the reasons set out in this judgment I find that the *sub judice* decision of the Respondent Commission has to be declared to be *null* and *void* and of no effect whatsoever. In view of this I do not have to, and I should not, decide any of the other issues raised in the present case.

It is now up to the Commission to revert to the disciplinary matters concerning the Applicant, in the light of this judgment and in the light of any relevant legal advice that it may be given; I think I should not express any specific view in this respect.

I have decided to make no order as to costs because though the Applicant has succeeded in this recourse he has been found to be wrong on some issues which he has raised and which have taken a lot of the time of this Court.

Sub judice decision annulled.
No order as to costs.