[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDREAS PAPALLIS,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF INTERIOR,

Respondent.

(*Case No.* 80/68).

Police Constable—Termination of engagement under the proviso to Reg. 7(1) *of the Police (General) Regulations* 1958–1966—*For reasons connected with his criminal record before enlistment and for non-satisfactory performance thereafter—Whether Applicant had a right to be heard*—Sub judice *decision held to be not of a disciplinary measure, but a revocation of the enlistment which was open to the Respondent (viz. the Chief of Police) under the proviso to Reg.* 7(1) (supra) *as well as under the general principles of administrative law.*

Administrative act or decision—An administrative act or decision is presumed to be well founded in fact until the contrary is proved—No issue of fact having been raised in the instant case, the reasons given for the subject decision stand as true in fact.

Administrative measure—As distinct from disciplinary punishment—See supra *under Police Constable.*

Disciplinary punishment—As distinct from an administrative measure—See supra.

On January 26, 1968 the Chief of Police addressed to the Applicant constable a letter which so far as material, reads:-

> " In virtue of the powers vested in me by the proviso to Reg. 7(1) of the Police (General) Regulations 1958–1966, you are hereby informed that your services in the Police are terminated with effect from February 26, 1968. The reasons for the termination of your services are the following:

(a) In your criminal record there are entries of two criminal convictions dated February, 1960, which are regarded as an insuperable impediment to your continued stay in the Police Force;

(b) Your performance in the recent permanency course which you attended at the Police School was not satisfactory".

The present recourse is made for the annulment of the decision conveyed by that letter.

It is not disputed that the aforesaid criminal record of the Applicant was unknown to the Chief of Police until December 19, 1967, viz. long after the Applicant's enlistment as a constable.

Regulation 7(1) of the Police (General) Regulations 1958–1966, so far as material reads:

> "..... the (Chief of Police) may at his discretion enlist a person as a constable.....
> .....
> Provided that the (Chief of Police) may, at any time, upon giving the person enlisted thirty days' notice in writing, determine the engagement of such person."

It was contended on behalf of the Applicant that he ought to have been heard in advance on the matters on which the subject decision was based and that he was not given the opportunity of being heard. It was further contended that the grounds of the subject decision "were not valid reasons upon which a termination of services should have been decided".

Dismissing the recourse, the Court:–

Held, (1). With regard to the argument concerning the right to be heard, clearly the Applicant had no such right as to reason (b) *supra*. Did he have such a right as to reason (a) (*supra*)? At first sight this reason looks like being of a disciplinary nature. But the semblance is a false one: The reason refers to matters that happened in 1960 long before the Applicant enlisted (some time in 1964), and the Police Chief's approach to the Applicant's criminal record was not that the Applicant must be punished by him, whether for having committed the offences or for concealing his criminal

record from the police authorities concerned with enlistment, but that that record was a bar to his enlistment in the first place and therefore the position should be restored by his engagement being terminated. Thus the reason (a) in question (*supra*) was not a disciplinary one. Altogether the subject decision was not of a disciplinary nature but simply a revocation of the enlistment, which apart from general principles of Administrative law was open to the Chief of Police under the said proviso to regulation 7(1) *supra*.

(2) If nevertheless the Applicant did have a right to be heard as to the said reason (a) *supra*, he had in fact been heard on January 2, 1968 when a statement was taken from the Applicant by Sub-Inspector N.K. which clearly contains all that the Applicant had to say both as to how he had come to be prosecuted, as to why the proceedings against him had been brought in a different name from that he had given in his enlistment application etc. etc.

(3) As to the last point raised by counsel of the Applicant (*supra*): At the hearing no issue of fact was raised as to either reason given by the Chief of Police in his said letter of January 26, 1968 (*supra*). Since an administrative act or decision is presumed to be well founded in fact until the contrary is proved, the reasons given stand as true in fact.

Recourse dismissed.
No order as to costs.

Recourse.

Recourse against the decision of the Respondent whereby Applicant's services as a Police Constable were terminated.

P. Laoutas, for the Applicant.

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

Cur. adv. vult.

The following judgment was delivered by:

STAVRINIDES, J.: On July 31, 1959, the Applicant, then almost 19, applied in writing for enlistment in the Cyprus Police Force. In that application he gave his name as Andreas Papallis David and stated that he had not been convicted of

any criminal offence. About 5 ½ years later, on February 17, 1964, he

> " was called before a Recruiting Board..... found suitable and was enlisted in the Police Force with effect from February 24, 1964, under reg. 7 of the Police (General) Regulations",

1958, (para. 6 of the statement of facts in the opposition). Only para. (1) of that regulation has a bearing on this case, and so far as material it reads:

> "..... the (Chief of Police) may, at his discretion, enslist a person as a constable for an initial period not exceeding three years but, at the expiration of that period, the person enlisted may, if he has given satisfactory service and if his services are further required by the (Chief of Police), upon giving three months' previous notice in writing to the (Chief of Police), opt for re-engagement for another like period:
>
> Provided that the (Chief of Police) may, at any time, upon giving the person enlisted thirty days' notice in writing, determine the engagement of such person."

On two different dates between the date of his application for enlistment and his interview with the Board, viz. on September 15, 1959 and November 20 of the same year respectively, the Applicant committed two criminal offences—stealing or receiving a bicycle (it is not clear which one). In respect of both offences he was dealt with by the District Court of Nicosia on February 25, 1960. For the first offence he was put on probation for one year and for the second he was bound over in £15 "to keep the peace for one year". All this was unknown to the Chief of Police and the Board until December 19, 1967, when, as para. 8 of the statement of facts in the opposition puts it,

> " information (was received) that..... (the Applicant) had certain previous convictions recorded against his name",

as a result of which

> " a search was carried out in the Criminal Records Office which revealed that a person by the name of Andreas Lavithi Papallis..... was on February 25, 1960, prosecuted before the District Court of Nicosia"

with the result already stated. Twice before, viz. on August 5, 1959, and February 10, 1964, a search had been carried out in the Police Register of Convictions against his name as given in his enlistment application but on neither occasion was anything found because of the discrepancy between his name as recorded in the register and his name as given by him in that application.

On January 26, 1968, the Chief of Police addressed to the Applicant a letter (*exhibit* 1), which, so far as material, reads:

> " In virtue of the powers vested in me by the proviso to reg. 7(1) of the Police (General) Regulations, 1958–1966, you are hereby informed that your services in the Police are terminated with effect from February 26, 1968.
>
> .....
>
> 3. The reasons for the termination of your services are the following:
>
> (a) In your criminal record there are entries of two criminal convictions dated February 25, 1960, which are regarded as an insuperable impediment to your continued stay in the Police Force;
>
> (b) Your performance in the recent permanency course which you attended at the Police School was not satisfactory";

and this application is for annulment of the decision conveyed by that letter.

Although the application gives what purport to be three grounds of law in its support, two of them, viz. (a) and (c), are really one, both being to the effect that the Applicant had a right to be heard in advance on the matters on which the subject decision was based and that he was not given the opportunity of being so heard. Ground (b) reads:

> " The grounds upon which the termination of Applicant's services are (sic) grounded are not valid grounds upon which a termination of services should have been decided."

With regard to the ground concerning the right to be heard, clearly the Applicant had no such right as to reason (b). Did he have such a right as to reason (a)? At first sight this reason looks like being of a disciplinary nature. But the semblance is a false one: The reason refers to matters that had happened

before the Applicant enlisted, and the Police Chief's approach to the Applicant's criminal record was not that the Applicant must be punished by him, whether for having committed the offences relating to the bicycles or for concealing his criminal record from the police authorities concerned with enlistment, but that that record was a bar to his enlistment in the first place and therefore the position should be restored by his engagement being terminated. Thus the reason in question was not a disciplinary one. Altogether the subject decision was not of a disciplinary nature but simply a revocation of the enlistment, which, apart from general principles of administrative law, was open to the Chief under the proviso of reg. 7(1). If nevertheless the Applicant did have a right to be heard as to reason (a), he had in fact been heard. For after "the information" referred to in para. 8 of the statement of facts in the opposition had been "received" and prior to the date of *exhibit* 1, viz. on January 2, 1968, a statement (*exhibit* 2) was taken from the Applicant by Sub-Inspector N. Koupatos, which clearly contains all that the Applicant had to say both as to how he had come to be prosecuted, as to why the proceedings against him had been brought in a different name from that which he had given in his enlistment application and as to how the District Court had come to decide that he had committed both offences. It follows that this ground wholly fails.

I now go on to ground (b), which refers to both reasons on which the subject decision was based. It is not clear on the face of it whether it was intended to dispute the factual basis of either of those reasons. In the case of reason (b) an issue of fact was raised by para. 3(a) of the statement of facts in the application. But at the hearing no issue of fact was raised as to either reason and no evidence was adduced. Since an administrative act or decision is presumed to be well founded in fact until the contrary is proved the reason stands as true in fact. In relation to reason (a) there has never been any issue of fact. As to the legal aspect of ground (b), it is covered by what I said in dealing with the right to be heard. It follows that this ground also fails.

In view of the foregoing the application must be dismissed. However, since it has not been suggested that the Applicant had tried to conceal his record I think I may properly spare him payment of the Respondent's costs.

Application dismissed without costs.