IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS HADJISAVVA,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 212/70).

Public Service and Public Officers—Termination of services in the public interest—Sections 6(f) and 7 of the Pensions Law, Cap. 311 (as amended)—Combined effect of said sections gives competence to the Council of Ministers to terminate an officer's service only in the cases of redundancy and on medical grounds—See further infra.

Termination of services of public officers in the public interest—Sections 6(f) and 7 of Cap. 311, supra—*Respondent's discretion exercised wrongly—Because it was exercised not for the purpose for which such discretion was given* viz. *for reasons of redundancy or on medical grounds—But in the way of a disciplinary punishment—Consequently, the* sub judice *decision has to be annulled on this ground—See also* supra—*See further* infra.

Natural justice—Rules of—Right of being heard—Termination of services of the applicant purporting to have been effected in the public interest under sections 6(f) and 7 of the Pensions Law, Cap. 311 (supra)—*On grounds of alleged misconduct—In the light of the material on record* sub judice *decision not a mere administrative measure but in substance a disciplinary punishment—Therefore, applicant should have been afforded a reasonable opportunity of being heard.*

Discretionary powers—Wrong exercise viz. *not for the purpose for which such discretion was given—See* supra.

Administrative acts or decisions—Validity—Misconception—Decision by the respondent Council of Ministers to terminate the services of the applicant public officer in the public interest—Taken in the light of a submission by the Ministry of Finance—No minutes taken at the relevant meeting of the Council—Said decision reached on the basis of a misconception that there were facts connecting applicant with the commission of criminal offences—Annulled on this ground also—

Administrative acts or decisions—Reasoning—Need for due reasoning of administrative decisions—Reasoning behind an administrative decision may be found in the decision itself or in the official records related thereto—Decision complained of not duly reasoned—Annulled on this ground too

Misconception of fact—Vitiating the administrative decision concerned—See supra.

Reasoning—Due reasoning of administrative decisions—See supra.

Disciplinary punishment—As distinct from a mere administrative measure in the public interest.

In the present recourse the applicant—a public officer—challenges the decision of the respondent Council of Ministers whereby, purporting to act under sections 6(f) and 7 of the Pensions Law, Cap. 311 (as amended), they have terminated his service on the ground of alleged misconduct.

Sections 6(f) and 7 of Cap 311 *(supra)* read as follows:

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

(a)

(b)

(c)

(d)

(e)

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

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

The Court annulled the decision complained of on several grounds :-

(a) The aforesaid sections are not applicable to the facts of this case; they give competence to the Council of Ministers to terminate an officer's service only in cases of redundancy and on medical grounds; and/or

(b) The respondent Council of Ministers wrongly exercised their discretion in that they have used it for a purpose other than the ones for which such discretion was given to them; and/or

(c) The *sub judice* termination of service having been effected on the ground of alleged misconduct is not a mere administrative measure but it amounts in substance to a disciplinary punishment; it follows that in accordance with the rules of natural justice the applicant should have been afforded the opportunity of being heard and defend himself; and/or

(d) The *sub judice* decision was reached under a miscon-

ception of fact *viz.* under the mistaken belief that there were facts connecting the applicant officer with the commission of criminal offences; and/or

(e) The said same decision was not duly reasoned.

Cases referred to :

Ahmet Nedjati and The Republic (1961) 2 R.S.C.C. 78, at p. 82;

Mehmet Ali Rouhi and The Republic (1961) 2 R.S.C.C. 84, at p. 87;

Leontios Papaleontiou v. The Republic (1967) 3 C.L.R. 624;

Lyssiotou v. Papasavva and Another (1968) 3 C.L.R. 173, at pp. 184-185;

McClelland v. N. Ireland Health Board [1957] 2 All E.R. 129, at p. 134 H.L.;

Papapetrou and *The Republic*, 2 R.S.C.C. 61, at p. 66;

Makrides and *The Republic* (1961) 2 R.S.C.C. 8, at p. 12;

Kanda v. *Government of the Federation of Malaya* [1962] A.C. 322, at p. 332;

Saruhan and *The Republic*, 2 R.S.C.C. 133, at p. 136;

Nissis (No. 2) v. *The Republic* (1967) 3 C.L.R. 671, at p. 675;

Constantinou v. *The Greek Communal Chamber* (1965) 3 C.L.R. 96, at p. 104;

Impalex Agencies Ltd. v. *The Republic* (1970) 3 C.L.R. 361, at p. 375;

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

Pantelidou and *The Republic*, 4 R.S.C.C. 100, at p. 107;

HadjiGeorghiou v. *The Republic* (1968) 3 C.L.R. 326;

Jacovides v. *The Republic* (1966) 3 C.L.R. 212, at pp. 219-221;

Nicolaides v. *The Greek Registrar of Co-operative Societies* (1965) 3 C.L.R. 585, at p. 600;

Pierides v. *The Republic* (1969) 3 C.L.R. 224, at p. 290;

Rallis and *The Greek Communal Chamber*, 5 R.S.C.C. 11;

Zavros v. *The Council for the Registration of Architects etc.* (1969) 3 C.L.R. 310, at p. 315;

Kasapis v. *The Council for Registration of Architects etc.* (1967) 3 C.L.R. 270, at pp. 275-276;

In re Poyser and *Mills' Arbitration* [1963] 1 All E.R. 612, at p. 616;

New York Times Co. v. *United States*, 403 U.S. 713; 29 L. Ed. 2d 822.

The facts of this case fully appear in the judgment of the Court.

Recourse.

Recourse against the decision of the respondent dated 30th April, 1970, terminating applicant's employment in the Public Service, in the public interest, under the provisions of sections 6 and 7 of the Pensions Law, Cap. 311.

L. Papaphilippou, for the applicant.

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

The following judgment was delivered by :-

HADJIANASTASSIOU, J. : In these proceedings, under Article 146 of the Constitution, the applicant seeks to challenge the decision of the Council of Ministers, dated

April 30, 1970, terminating his employment in the public interest as from June 5, under the provisions of ss. 6 and 7 of the Pensions Law, Cap. 311 (as amended) as being contrary to the Constitution, illegal, null and void and of no effect whatsoever.

The facts are as follows :-

The applicant was appointed on August 16, 1960, as an elementary school teacher, and after serving in that post for a number of years, on November 1, 1966 (having resigned his post) he joined the public service on a temporary monthly basis, and was attached to the Public Information Office. On December 1, 1968, he was given the substantive post of assistant publications officer, 2nd grade, and on March 15, 1969, he was promoted to assistant publications officer 1st grade, a post which he held until the termination of his services on June 5, 1970.

On November 10, 1969, at 3.00 p.m., the District Commander, Mr. Fessas, acting on information, visited together with other police officers, including Inspector Mourouzides, the Religious Orthodox Club, St. Demetrianos, (hereinafter referred to as THOI) at Omorphita village. Because the club premises were locked, the daughter of Paraskevou Charalambous Zipiti (who was the person in charge of the buffet) unlocked them and in her presence the premises were searched by the police. In a football playing machine which was locked, the police found explosives, and a full list was prepared and appears at p. 3 of the report prepared by Mr. Mourouzides, who apparently was the investigator. Then the police further searched the office of the club, and in one of the unlocked doors found a bunch of six keys, two of which fitted into one of the two locks on that football playing machine. The police at 4.30 p.m. interrogated Paraskevou Charalambous Zipiti who told the police that she was not aware of the presence of explosives in the club, adding that the football playing machine, although it was the property of the club, was not in use and its keys were in the office of the club which was used by the members of the committee. I think I should have added that the club was run by a committee of five members, including P.C. 2260,

Antonis Michael, and the chairman was the applicant.

At about 7.45 p.m. of the same night the five members of the committee of the club visited the police station of Omorphita and reported that recently the rear door of the reading room of the club was broken, but after investigation (in accordance with the report of Inspector Mourouzides) the police found that the reading room did not have any signs of being broken into. Inspector Mourouzides in his report commented that the complaint of the committee seemed *prima facie* to be false, because as it was made after the finding of the explosives, it seemed very suspicious and was made for obvious reasons.

Regarding the finding of the explosives in the club, the five members of the committee were interrogated and statements were made by them in which they said that they were not aware of the presence of the explosives found in the football playing machine which was not in use. They further said that the keys were in the office and its drawers were not locked. The homes of the committee members were searched but no incriminating material was found. Be that as it may, because the police had certain information of a confidential nature that the members of the committee were connected with the possession of the explosives, the police under a Court warrant arrested them on November 11, 1969, and they were placed in custody for a period of eight days until the completion of police investigations. The police continued with the investigation of the case and all the members of the club (about 50) were interrogated, but because there was no evidence of such a nature as to connect the five members of the committee with the explosives, they were released.

On February 27, 1970, Mr. Mantovanis, on behalf of the Director-General of the Ministry of Interior, wrote to the Director of the Public Information Office, under which the applicant was serving, that there was information on the 20th February connecting the applicant with the distribution of certain leaflets belonging to the political party known as "Enieon" which were stuck on the walls of the main streets of Nicosia. In accordance with that

letter (red 18 in *exhibit 2*) it was said that the Minister of Interior expressed the view that the behaviour of that officer should be investigated in accordance with the provisions of s. 80 of the Public Service Law, 1967. Regarding the political activities of a public officer, s. 71 reads as follows :-

"Any public officer may hold any political views so long as such views do not militate against the proper discharge of his public duties and do not interfere with the carrying out of government policies.

(2) In order that a public officer may carry out government policies unbiassed by his own political views, he shall not --

(a) engage in the furtherance of political propaganda in any form;

(b) engage in public manifestations of a political character."

Unfortunately, nothing appears in *exhibit 2* if there was a reply on behalf of the Director of the P.I.O. and that the behaviour of the applicant regarding his political activities has been investigated in accordance with the law but it appears that on March 8, the applicant was arrested and was placed in police custody because he was suspected of having taken part in the conspiracy regarding an attempt on the life of the President of the Republic, Archbishop Makarios. After remaining in custody he was released on April 13, 1970, because nothing incriminating came to light justifying a criminal charge against him. In the meantime, the applicant on the same date when he was arrested, he was interdicted by the Public Service Commission, exercising their powers under s. 84 of Law 33/67, and allowed him to receive half of the emoluments of his office pending the investigation of a criminal offence against him. Section 84(1), (2) & (3) reads as follows :-

"When an investigation of a disciplinary offence is directed under the provisions of paragraph (b)

of section 80 against an officer or on the commencement of a police investigation with the object of criminal proceedings against him, the Commission may, if public interest so requires, interdict the officer from duty pending the investigation and until the final disposal of the case.

(2) Notice of such interdiction shall be given in writing to the officer as soon as possible and thereupon the powers, privileges and benefits vested in the officer shall remain in abeyance during the period the interdiction continues :

Provided that the Commission shall allow the officer to receive such portion of the emoluments of his office, not being less than one half, as the Commission may think fit.

(3) If the officer is acquitted or if as a result of the investigation there is no case against him, the interdiction shall come to an end and the officer shall be entitled to the full amount of the emoluments which he would have received if he had not been interdicted..."

As I have said earlier, the applicant was released from police custody for the reasons given earlier in this judgment that as a result of the investigation, there was no case against him. The Director-General of the Ministry of Interior on May 7, 1970, wrote to the Chairman of the Public Service Commission that since the Council of Ministers decided to terminate the employment of the applicant in the public interest, there was no reason to keep the applicant under interdiction. (See red 23 of *exhibit 2*).

It is to be observed that although the applicant was released, nevertheless, no evidence was adduced before me that he was paid his emoluments which he would have received if he had not been interdicted. (See sub—s. 3 of s. 84, Law 33/67).

It appears that in an answer to a questionnaire by counsel appearing in this case, Mr. Mantovanis on behalf

of the Director-General of the Ministry of Interior, wrote in reply on October 2, 1970, that although the Council of Ministers discussed in brief the case of the applicant, nevertheless, no minutes were kept during that meeting (see this minute in *exhibit 2*).

It is perhaps significant to state that the Director-General of the Ministry of Interior wrote to his colleague of the Ministry of Finance that he had instructions from his Minister to request him to take the appropriate action for the termination of the services of the applicant in the public interest in accordance with the provisions of the Pensions Law, Cap. 311; and in paragraph 2 in *exhibit 1*, (red 20), the reasons which necessitated the taking of such a decision appear under paragraphs (a), (b) and (c). I propose reading paragraph 3, which in English is as follows :-

> "It is to be understood that this matter has been discussed briefly at the meeting of the Council of Ministers on April 16, 1970, and the view prevailed that the termination of the services of Mr. Hjisavva, in view of the circumstances, was an appropriate act."

It would indeed be very interesting to know, since no minutes were kept and no submission was made, what was the material before the Council of Ministers before reaching a decision with so far-reaching effects on the future of the applicant. Nevertheless, on April 21, 1970, the Ministry of Finance prepared a submission to the Council of Ministers, acting on the contents of the letter (red 20) of the Ministry of Interior, inviting the said Council of Ministers to terminate the services of the applicant in the public interest (see red 21).

On April 30 of the same year, (red 22) the Council of Ministers under its decision No. 9638, decided in the circumstances appearing in the submission to approve, in accordance with sections 6(f) and 7 of the Pensions Law Cap. 311 (as amended by Laws 17 of 1960, 9 and 18 of 1967 and 51 and 119 of 1968) the termination of the services of Mr. Hjisavva in the public interest and to grant him all allowances to which he is entitled under

the provisions of the aforesaid law (see an extract of the minutes of the meeting of the Council (red 22)). It is to be observed that the decision of the Council of Ministers which led to the termination of the services of the applicant, was based on the reasons appearing in the letter of the Director-General of the Ministry of Interior, dated April 18, 1970 (red 20) and I propose reading in English paragraph 2(a) :-

> "Mr. Hjisavva was arrested on November 10, 1969, regarding the finding of explosive substances and ammunition at the Religious Orthodox Club St. Demetrianos of Omorphita, of which he was the chairman of the committee. It is to be observed that one of the bombs found was exactly of the same type as the one which was found on October 27, 1969, outside the Presidential Palace. I attach a copy of a detailed report of Inspector K. Mourouzides, which refers both to the finding of explosive substances in THOI, Omorphita, as well as to the incident of the Presidential Palace."

Turning now to the report which is 6¼ pages long, it appears that all five persons who were in custody made statements to the police and the alibi of the applicant appears at page 5 (red 13) which, in effect, is as follows :-

> "He gave a statement that on the 27th October, 1969, he was working as usual at the Public Information Office and at about 5.00 p.m. he left from his work driving his vehicle under Registration No. DU 223 and proceeded towards his home which is situated at Omorphita. There he met Michalakis Spyrou, with whom they share the same house. Moreover, he said that he left together with Michalakis from their home at 6 p.m. and they went to the premises of EAL. From there, after a period of 4—5 minutes they went to the premises of POED, which is at Makarios III Ave., where Michalakis Spyrou left the applicant, who met a certain Nicos Leontiou, and they proceeded in the car of Spyrou to Lythrodonta village, because they would have been addressing an organized gathering in honour of OXI Day. They arrived at Lythrodonta

at about 7.00 p.m. and they returned to Nicosia at 10.30 p.m. Regarding the explosion within the Presidential Palace, he said that he was informed of that the following day, the 28th October, 1969, from the newspapers. He went on to say that he seldom passes in front of the Presidential Palace, and on the 27th October, 1969, he did not do so."

Regarding the alibi of the applicant, Inspector Mourouzides said at p. 6 of the report (red 12) that from statements which were obtained it was found that he left for Lythrodonta at 6.30 p.m., but his alibi as from 5.30—6.30 appears to be weak, because he was in the company of Michalakis Spyrou who was also arrested over this incident. It appears that there is a discrepancy, since Michalakis Spyrou who was interrogated later on did not mention in his statement that before he arrived with Hjisavva at the premises of POED they stopped for 4—5 minutes at the premises of EAL.

Finally, the conclusions reached by Inspector Mourouzides appear at paragraph 31 of his report, and I propose reading them in English :-

"Regarding the explosion at the Presidential Palace, over and above the information obtained, and the similarity of the bombs which were wrapped with black tape, and the suspicious alibi of two of the three persons in custody, there is no evidence which justified preferring a criminal charge against them. As regards the finding of the explosive substances, I am of the view that the evidence was not sufficient to bring the accused before a Court of law. There is no evidence which can connect specific persons with the explosive substances, and the mere fact that the keys of the football playing machine were found in unlocked drawers in the office of the club does not support that the possession of the explosive substances can be limited only to the five members of the committee who were using the office. The key, as well as the football playing machine were in such a place that it could have been opened by almost any of the members of THOI. In spite of the fact that the evidence in our

hands would not have justified preferring a criminal charge, nevertheless, the information and other material available connect at least three of the members of the committee with the explosive substances as well as with the explosion at the Presidential Palace."

Pausing here for a moment, I am posing this question: What was the information and other material in the hands of the police; and if there was such information other than that referred to in the report, was it placed before the Council of Ministers when they reached their decision? Unfortunately, in the absence of any minutes, I can only assume that the concluding words of the report were very misleading indeed. I am fortified in my view that it is so, after reading an extract from the legal opinion of the Attorney-General, which is referred to in the report of the District Commander Mr. Mezos dated May 11, 1970, at p. 1 :-

> "The existing evidence, as at present, does not justify preferring a criminal charge against the accused. No evidence appears which completely connects the accused with the placing and possession of the found explosive substances. In view of this, the enquiries should be continued."

It appears that on May 11, 1970, a letter was written to the applicant informing him that his services were terminated in the public interest, and because he felt aggrieved he filed the present recourse. The grounds of law of substance raised in the application are :-

(a) That the Council of Ministers had no power to deal with the question of the termination of the services and/or dismissal of a public officer who was appointed in the public service both before and after August 15, 1960;

(b) the Council of Ministers had no competence, and their decision was taken contrary to Article 122 of the Constitution and the provisions of the Public Service Law, 1967;

(c) the decision complained of is in the form of a

punishment and of a disciplinary nature and was reached without affording the applicant an opportunity to be heard in his defence;

(d) the said decision was not reasoned and/or duly reasoned under the circumstances, both as regards the factual and legal issues; and

(e) that even if the Council of Ministers had competence to deal with this matter, in the light of the material before it, it did not act in accordance with the rules and acted contrary to the real facts of this case and/or under misconception of both the facts and the law.

On October 23, 1970, the opposition on behalf of the Republic was filed, and it was based on the following legal points :-

(1) That the decision complained of was not a disciplinary punishment but of an administrative measure, which was taken lawfully in the public interest, in accordance with the provisions of s. 6(f) and 7 of the Pensions Law, Cap. 311, and Laws 17 of 1960, 9 & 18 of 1967 and 51 & 119 of 1968; and in accordance with all relevant material as presented in the opposition;

(2) the decision complained of is duly reasoned as it appears from the relevant material of the file in accordance with the attached exhibits.

I believe that it is constructive to state that on December 21, 1970, there were five cases before me relating to the termination of services in the public interest, and counsel appearing on behalf of all the applicants in cases 212/70, 214/70, 215/70, 217/70 and 218/70, made the following statement :-

> "I have been authorised on behalf of all the applicants who are present in Court to request an adjournment, because applicants think that an adjournment will be in their own interest. The applicants intend to place before the appropriate authority more material in order to reach an out of Court settlement if the other side will accept.

In any event, the applicants would like to make it quite clear that the material which they will place before the appropriate authority will relate to the question of compensation and to the question of their jobs. Moreover, I understand from my learned friend that he is ready to submit their application in time to the appropriate authority."

Then counsel on behalf of the Republic said :-

"I agree that if the applicants are going to prepare an application that application will be submitted to the appropriate authority for consideration."

All the cases were adjourned to February 1, 1971, to allow the parties sufficient time, but because no settlement was reached on that day and after some further adjournments at the request of both parties, the cases were finally fixed for hearing on November 5, 1971. On that date counsel on behalf of the applicants made the following statement :-

"These cases were fixed today to be tried along with the other three cases which, fortunately, have been settled and are now withdrawn from the list of this Court. In view of the fact that Your Honour was sitting in the Court of Appeal and as it took us a long time for the settlement of the other three cases, and since it is 12 o'clock now, I am asking that the hearing of these cases ought not to be fixed in the afternoon, but to be given another date."

Then counsel for the respondent said :-

"I have no objection. As a matter of fact, I am also busy in the afternoon so it is not an inconvenience for me."

Pausing here for a moment, I would like to observe that I have failed to understand why the Government thought fit to settle cases Nos. 214/70, 217/70 and 218/70 and not the cases of the other two applicants, particularly so, when all five cases were decided on the

issue of public interest.

I think that I ought to reiterate that when as a result of the investigation there was no case against the applicant, the Council of Ministers decided under the provisions of the Pensions Law, Cap. 311 (and the case was argued on these lines only) to terminate the services of the applicant in the public interest.

The legislative provisions regarding the retirement of public officers are to be found in the Pensions Law, Cap. 311 (as amended) which lays down a comprehensive pensions scheme for the public service. The Pensions Law conferred all the powers to declare an office pensionable, to require or permit an officer to retire or to allow an officer to remain in the service after attaining the age of 55 years on the Governor or the Governor-in-Council of the then Colony of Cyprus. Since Independence Day those provisions have to be read subject to the provisions of paragraph 3(b) of Article 188 of the Constitution which provides that, unless the context of a pre-constitutional law otherwise requires, any reference to the Governor or the Governor-in-Council in such law shall be construed as a reference to the Council of Ministers in matters relating to exercise of executive power. Under the provisions of s. 2(1) of Cap. 311 the Governor-in-Council could declare an office to be a pensionable office. That power has, since the establishment of the Republic, been exercised by the Council of Ministers. Under the provisions of s. 3(1) pensions and gratuities are granted by the Governor in accordance with the regulations contained in the schedule to the law, and such pension or gratuity is computed in accordance with the provisions in force at the actual date of an officer's retirement. There again the competent organ entrusted with this duty and power is now the Council of Ministers.

Regarding the circumstances in which pension may be granted, section 6 (as amended) reads as follows :-

> "No pension, gratuity or other allowance shall be granted under this law to any officer except on his retirement from the public service in one of the

following cases :-

(a) On or after attaining the age of 55 years (now 60 years) or in any case in which the Governor, under the provisions of this law, may require or permit an officer to retire on or after attaining the age of 50 years, on being required or permitted so to retire.

(b)

(c) On the abolition of his office;

(d) on compulsory retirement for the purpose of facilitating improvement in the organization of the Department to which he belongs, by which greater efficiency or economy may be effected;

(e) on medical evidence to the satisfaction of the Governor-in-Council or the Secretary of State that he is incapable by reason of any infirmity of mind or body of discharging the duties of his office and that such infirmity is likely to be permanent;

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

(g)

Regarding the termination of employment in the public interest, s. 7 is in these terms :-

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

circumstances described in paragraph (e) of section 6 of this Law."

As I have said earlier, in this case we are concerned with the power of the competent organ to take a decision to retire a public officer in the public interest, and I think that it is convenient to turn to paragraph 1 of Article 125 of the Constitution, which confers, *inter alia*, the power on the Public Service Commission to retire a public officer. Paragraph 1 reads as follows :-

> "Save where other express provision is made in this Constitution with respect to any matter set out in this paragraph and subject to the provisions of any law, it shall be the duty of the Public Service Commission to make the allocation of public offices between the two Communities and to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer, retire and exercise disciplinary control over, including dismissal or removal from office of, public officers."

The Supreme Constitutional Court of Cyprus dealing with paragraph 1 of this Article, in *Ahmet Nedjati* and *The Republic of Cyprus* (1961) 2 R.S.C.C. 78 at p. 82 said :-

> "The Court is of the opinion that paragraph 1 of Article 125 constituted the Public Service Commission as the only competent organ to decide on all matters stated therein concerning the individual holders of public offices.
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> It will be seen, therefore, that the objects of paragraph 1 of Article 125 include, not only the safeguarding of the efficiency and proper functioning of the public service of the Republic, but also the protection of the legitimate interests of the individual holders of Public offices."

Regarding the question whether the provisions of the Pensions Law, Cap. 311 were not inconsistent with the competence of the Public Service Commission under paragraph 1 of Article 125 of the Constitution, the

Supreme Constitutional Court in *Mehmed Ali Rouhi* and *The Republic* (1961) 2 R.S.C.C. 84 had this to say at p. 87 :-

> "Paragraph 1 of Article 125 of the Constitution is a provision defining the competence of the Public Service Commission. The taking of a decision is an essential ingredient of the notion of competence. A provision of a law not requiring the taking of a decision does not involve the exercise of competence. It follows, therefore, that provisions such as those contained in the Pensions Law, Cap. 311, making retirement automatic by operation of law on reaching a specified age limit are not inconsistent with the competence of the Public Service Commission to deal with matters relating to retirement and requiring the taking of a specific decision. In the circumstances the said provisions of Cap. 311 continue in force, without any modification in this respect under Article 188 of the Constitution, and they, therefore, come within the expression 'subject to the provisions of any law' in paragraph 1 of Article 125."

There is no doubt that the Public Service Commission is vested under the Constitution with only those powers which it has expressly been given under Article 125; and the residue of any executive power in respect of any matters concerning the public service of a State, which by its constitution has not been expressly given to an independent body such as the Public Service Commission, remains vested in the organ of the State which exercises executive power within whose province the Public Service of the State normally otherwise comes, and in the case of the Republic of Cyprus, such organ, under Article 54 of the Constitution, and particularly paragraphs (a) and (d), is the Council of Ministers. See *Papapetrou* and *The Republic*, 2 R.S.C.C. 61 at p. 66.

The question which falls to be determined by this Court is whether the Council of Ministers, as counsel for the respondent claimed, had exclusive competence to retire the applicant in the public interest. Counsel relies on *Papaleontiou* v *The Republic* (1967) 3 C.L.R. 624.

Now I have had the occasion of reading carefully the

judgment of the Court, but with respect to the argument of counsel, that case is distinguishable from the case in hand, and does not in my view support his argument that the Council of Ministers had exclusive competence in the present case to retire the applicant in the public interest. To quote the words of the learned trial judge :-

> "It has been argued by the applicant that it was not the Council of Ministers, but the Public Service Commission under Article 125.1 of the Constitution, which was the competent organ to deal with his request contained in his aforementioned letter of the 1st January, 1966.
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> Without going fully into the extent of the competence of the Commission—under Article 125.1 —in matters of retirement or termination of services of public officers, I am satisfied that in the present instance it was the Council of Ministers which was the competent organ to deal with the matter involved in this recourse :
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> What happened was, in essence, that the applicant had decided, on his own, to resign and he did communicate this to Government by his letter of the 1st January, 1966; he coupled the communication of his decision to resign with a request that the termination of his services should be treated as having taken place in the public interest, but he did not make his resignation conditional upon his request being granted.
>
> Whether or not the request of the applicant would be granted was a question entailing considerations of public interest and Government policy, as well as financial consequences; these matters were beyond the limited and specifically laid down competence of the Public Service Commission under Article 125.1, and within the residual competence of the Council of Ministers under Article 54 of the Constitution."

Per Triantafyllides, J. (as he then was) at p. 631.

The next case is *Lyssiotou* v. *Papasavva and Another,*

(1968) 3 C.L.R. 173, and at pp. 184—185 Josephides, J., had this to say :-

> "It should, perhaps, be clarified that we are not here concerned with the compulsory retirement of a public officer following disciplinary proceedings, which would no doubt be within the competence of the Commission; nor are we concerned with the retirement of a public officer 'in the public interest', under the provisions of section 7 of the Pensions Law, Cap. 311, which would appear to fall within the exclusive competence of the Council of Ministers (cf. the cases of the termination of the services of three Court stenographers referred to in the case of *Papaleontiou* v. *The Republic* (1967) 3 C.L.R. 624)."

It seems to me that, if the *ratio decidenti* of this case is that the Council of Ministers would have had exclusive competence with the retirement of a public officer in the public interest under the provisions of s. 7 of the Pensions Law, Cap. 311, I would not, with respect, be prepared to follow that decision, because in *Lyssiotou* case *(supra)* the question of competence of the Council of Ministers under the provisions of s. 7 was not in issue in that case. See also my dissenting judgment in the same case at p. 194, regarding the competence of the Public Service Commission under paragraph 1 of Article 125.

In *McClelland* v. *N. Ireland Health Board* [1957] 2 All E.R. 129, (H.L.) Lord Goddard said at p. 134 :-

> "Remembering the terms of the advertisement in conjunction with the provisions of cl. 12, I think the fair conclusion is that the board offered and the appellant accepted employment on terms as secure as is, in fact, enjoyed by civil servants. Although a civil servant, as is well known, is employed at the pleasure of the Crown and can be dismissed at any moment, in fact once he has qualified by examination or probation and is taken on the establishment he is secure in his employment till he reaches the retiring age, apart of course from

misconduct or complete inefficiency."

In *Makrides* and *The Republic* (1961) 2 R.S.C.C. 8, the Court, dealing with the questions of pensions and gratuities, had, this to say at p. 12 :-

> "Notwithstanding the fact that under the constitutional and legal principles prevailing in Crown Colonies, such as the former Colony of Cyprus was, matters of pension and gratuity are, by legal fiction, regarded as discretionary acts of grace, they were, nevertheless vested 'rights' of the individual concerned, inasmuch as they could be vindicated through the appropriate administrative procedure. The Court is of the opinion that the decision of any organ, authority or person exercising any executive or administrative authority in such matters after the date of the coming into operation of the Constitution is a decision which can properly be made the subject of a recourse under Article 146."

In *Kanda* v. *Government of the Federation of Malaya*, [1962] A.C. 322 (H.L.) Lord Denning had this to say at p. 332 :-

> "Inspector Kanda relies for this contention on Articles 140(1) and 144(1) of the Constitution which read as follows :-
>
> '140(1). There shall be a Police Service Commission, whose jurisdiction shall, subject to Article 144. extend to all persons who are members of the police service.
>
> 144(1). Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission .... to appoint, confirm .... promote, transfer and exercise disciplinary control over members of the service .... to which its jurisdiction extends.'
>
> In answer to this contention, the Government of Malaya point to the words 'subject to' in both Articles 140(1) and 144(1). Those words give

priority, they say, to the existing law and preserve it intact, including the power of the commissioner to appoint superior police officers.

The Government admit that after Merdeka Day a Police Service Commission was established and that since Merdeka Day all superior police officers, including police inspectors, have been appointed by the Police Service Commission. They admit, too, that on July 7, 1958, the Commissioner of Police was an authority subordinate to the Police Service Commission. But, despite these admissions, they say that the existing law as to appointment and dismissal was preserved by the opening words of Article 144(1) which says that the duty of the commission is 'subject to the provisions of any existing law'. This gives priority, they say, to the existing law. The Constitution is subject to the existing law, and not *vice versa*. The words 'subject to the provisions of this Constitution' can be amply satisfied, they say, by reference to Article 144(3)(4) (which refers to special posts) and 135(2) (which gives a right to be heard).

This argument found favour with Thomson C.J. and Hill J.A.: but their Lordships find themselves unable to accept it. Their Lordships realise that it is a difficult point but they prefer the view taken by Rigby J. and Neal J. It appears to their Lordships that, as soon as the Yang di-Pertuan Agong appointed the Police Service Commission, that commission gained jurisdiction over all members of the police service and had the power to appoint and dismiss them. It is true that under Article 144(1) the functions of the Police Service Commission were 'subject to the provisions of any existing law': but this meant only such provisions as were consistent with the Police Service Commission carrying out the duty entrusted to it. If there was in any respect a conflict between the existing law and the Constitution (such as to impede the functioning of the Police Service Commission in accordance with the Constitution) then the existing law would have to be modified so as to accord with the Constitution. There are elaborate

provisions for modification contained in Article 162..."

Later on he said at p. 334 :-

"It appears to their Lordships that, in view of the conflict between the existing law (as to the powers of the Commissioner of Police) and the provisions of the Constitution (as to the duties of the Police Service Commission) the Yang di-Pertuan Agong could himself (under Article 162(4)), have made modifications in the existing law within the first two years after Merdeka Day. (The attention of their Lordships was drawn to modifications he had made in the existing law relating to the railway service and the prison service). But the Yang di-Pertuan Agong did not make any modifications in the powers of the Commissioner of Police, and it is too late for him now to do so. In these circumstances, their Lordships think it is necessary for the Court to do so under Article 162(2). It appears to their Lordships that there cannot, at one and the same time, be two authorities, each of whom has a concurrent power to appoint members of the police service. One or other must be entrusted with the power to appoint. In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail."

Having established that a civil servant was secured in his employment till he reached the retiring age, apart of course from misconduct or complete inefficiency, I shall proceed now to show that his position after Independence Day is much better and even more secure. The Constitution of the Republic, like many post-war constitutions, could not ignore the social rights of man arising out of his new multifarious and economic relations in modern society. Such rights are clearly connected with the *individual rights belonging to man as an abstract human* being, and are considered as a prolongation of liberty. The right to work—particularly for a civil servant—can no longer depend upon the pleasure of the Republic, but is guaranteed. In our country, in which the rule of law is deeply rooted, I would reiterate that a public servant

is secure, because the function of law is not merely to regulate the conduct of the governed, but also to protect them from abuses or excess of power by the governors. Cf. *New York Times Co.* v. *United States,* reported in Vol. 403 U.S. Part 3 of the Supreme Court Reports, 713; 29 L. Ed. 2d 822.

Reverting now to sections 6 & 7 of the Pensions Law, Cap. 311 (as amended) I am inclined to take the view that the combined effect of both sections may give competence to the Council of Ministers to terminate an officer's service only in the cases of redundancy and on medical grounds. I am supported in this view, because of the wording of section 7; "Having regard ....., the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest." Needless to say, a public officer is an officer who discharges his duties, in the discharge of which the public are interested, and it is fallacious to say that in the circumstances of the case in hand, it was in the public interest to retire the applicant, who until recently, was discharging his duties effectively and efficiently. I should have added that in these circumstances, the applicant would have been entitled to expect from the Public Service Commission the protection of his legitimate interest in the light of the decision of the Supreme Court in *Nedjati's* case *(supra).* Taking into consideration all the circumstances of this case, and in view of the fact that I did not hear full argument regarding the effect of *Rouhi's* case and of the judgment of Lord Denning in the *Kanda* case *(supra),* I have decided to keep open the question as to which organ is the competent authority, in a proper case, to terminate the employment of a public servant in the public interest under the provisions of ss. 6(f) and 7 of the Pensions Law, Cap. 311.

Regarding the further complaint of the applicant that the decision of the Council of Ministers was in the form of a punishment, and was made for disciplinary reasons, counsel on behalf of the respondent, quite fairly, put forward the proposition that if the Court in the light of the material before it reached the view that the decision complained of was not of an administrative

measure but a disciplinary punishment, the Court was entitled to declare null and void the said decision, because the discretionary power of the Council was exercised in a defective manner.

It has been said judicially in a number of cases, that in a recourse under our Article 146, the onus of establishing excess or abuse of power, rests with the person who makes the application, *i.e.* the applicant. See *Saruhan* and *The Republic,* 2 R.S.C.C. 133 at p. 136; *Nissis* (No. 2) v. *The Republic* (1967) 3 C.L.R. 671 at p. 675. Furthermore, when abuse or excess of power as a ground for annulment of administrative acts or decisions is alleged, the existence of excess or abuse of power of a particular nature has to be established to the satisfaction of the Court. The power may be discretionary, but once it is exercised, such exercise must be for the purpose for which it was given. Assuming for a moment that the Council of Ministers had competence under the law to do so, the discretion should be exercised in a valid manner, and the Supreme Court will not interfere with the exercise of such discretion by the substitution of its own discretion for that of the authority concerned, even if in exercising its own discretion on the merits the Court could have reached a different decision. See *Constantinou* v. *The Greek Communal Chamber* (1965) 3 C.L.R. 96 at p. 104.

In a recent case on this point in *Impalex Agencies Ltd.* v. *The Republic* (1970) 3 C.L.R. 361 at p. 375, the Court had this to say :-

> "The next question which is posed is whether the Minister in refusing to grant a licence to the applicant company has properly exercised his discretionary powers. With regard to the discretionary powers, the trend of the authorities is that once a discretionary power is exercised, such exercise must be for the purpose for which it was given. As long as the discretion is exercised in a lawful manner, the Supreme Court will not interfere with the exercise of such discretion by substituting its own discretion for that of the authority concerned, even if in exercising its own discretion on the merits, the Court could have reached a different conclusion. See

Jacovos L. Jacovides v. *The Republic* (1966) 3 C.L.R. 212 at pp. 219—220.

A discretion is exercised, of course, in a lawful manner, if in its exercise all material considerations have been taken into account, due weight is given to material facts, and has not been based on a misconception of law or fact. A defective exercise of a discretion may, therefore, amount to an excess or abuse of power."

For the reasons I have given earlier, in my view, the Council of Ministers wrongly exercised their discretionary powers under the law to terminate the employment of the applicant, because such exercise was not made for the purpose for which it was given, *viz.* for reasons of redundancy and on medical grounds, which has nothing to do with the case of the applicant who, as I said earlier, until that time he was discharging his duties in an efficient manner. Furthermore, in view of the material before me, I am driven to the inescapable conclusion that the decision complained of was not an administrative measure, but a disciplinary punishment; and the dismissal was intended to punish the applicant for his alleged misconduct without affording him his inalienable rights to have a reasonable opportunity of being heard. I should have added that in this case the applicant ought to have known what evidence has been given and what statements have been made affecting him; and then he ought to be given a fair opportunity to correct or contradict them. That this view is a correct one is supported by the judgment of the then Constitutional Court in *Kalisperas* and *The Republic*, 3 R.S.C.C. 146 at p. 151 :-

"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 is 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. Such a course is to be adopted both by the Commision and by this Court when dealing, within their respective competence, with particular transfers. There should be left no room for speculation when the application of the principles of natural justice is at stake."

This decision was adopted and followed in *Pantelidou* and *The Republic*, 4 R.S.C.C. 100 at p. 107. See also *Hadjigeorghiou* v. *The Republic* (1968) 3 C.L.R. 326, where the authorities are reviewed regarding the principles of natural justice.

For the reasons I have endeavoured at length to explain, and in view of the fact that the predominant purpose of the decisions of the Council of Ministers at both their meetings of April 16 and 30, 1970, was for reasons of misconduct only, I find myself in agreement with counsel for the applicant that the relevant decision should be annulled as being contrary to the law, null and void and of no effect whatsoever.

I propose now dealing with the validity of the said decision, regarding the question raised as to misconception of the material facts. I think I agree with counsel for the respondent that this Court cannot interfere with the question of public policy, but with respect, public policy does not dictate that tenure of an office held even at pleasure, should be terminable without allowing its occupant any right to make prior representations on his own behalf; indeed, the unreviewability of the substantive grounds for removal indicates that procedural protection may be all the more necessary. On the contrary, however, counsel agreed (being a well-known principle in administrative science) that this Court is entitled to examine and review the validity of such decision, in order to decide whether the said decision was reached under a misconception of fact.

No doubt, misconception of fact causes a defective exercise of discretion, and in such a case the decision

reached is contrary to law, because the legal principle has been applied on the strength of a factual situation other than the correct one. See the well-known textbook by Stassinopoulos on the Law of Administrative Disputes 1964 edition at pp. 220—222. I think I should have added that Stassinopoulos takes the view that the question of misconception of fact is wrongly treated for the purposes of annulment, as a defective exercise of discretion by the administration. Be that as it may, I would state that I am also aware of the principle formulated, that the burden of proving the existence of such a misconception lies on the person alleging it, because there is a presumption against the existence of misconception. See *Nicolaides* v. *The Greek Registrar of Co-operative Societies* (1965) 3 C.L.R. 585 at p. 600; this presumption is weakened, however, once the applicant succeeds in showing the possible existence of a misconception of fact on the part of the administration, *i.e.* by creating doubts in the mind of the judge, upon the correctness of findings of fact by the administration. I would, further, add that in such a case, annulment is not declared because factually misconception has been established, but in order to rid the administrative decision of the suspicion that it was based on a factual misconception.

In *Pierides* v. *The Republic* (1969) 3 C.L.R. 274 at p. 290, after adopting and following a passage from Stassinopoulos on the law of administrative acts, 1951 ed. at p. 305, I said :-

> "In such cases, the judge, finding himself in doubt, is not inclined to follow the aforesaid presumption, but he resorts to the one of the two courses; that is, he either (a) directs production of evidence, or (b) he annuls the act so that the administration may ascertain the actual circumstances in a way not leaving doubts."

Having reviewed the authorities and in the light of the material before me, (the cumulative effect of which is only of a suspicious nature), I have reached the view that the decision of the Council of Ministers was made in the light of the contents of the submission by the Ministry of Finance, and was reached on the basis of

misconception that they were facts connecting the applicant (a) with the possession of the found explosive substances; (b) with his political activities; and (c) with the conspiracy charge of attempt on the life of the President of the Republic Archbishop Makarios. I am sure that the Council of Ministers was misled probably because of the concluding remarks of Inspector Mourouzides that information and other material available connected at least three of the members of the committee with the explosive substances as well as with the explosion at the Presidential Palace. But, as I have already said, in the absence of any minutes kept at the meeting of the Council of Ministers, I can only reach the conclusion that the information and other material were only of a suspicious nature and not statements tending to establish a particular fact. In view of my conclusions, I have decided to annul the *sub judice* decision, because it is vitiated by a material misconception of fact.

In answer to the last contention of the applicant, counsel on behalf of the Council of Ministers contended that, the decision was duly reasoned in view of the official records before the Court. It is one of the concepts of administrative law that administrative decisions must be duly reasoned. Due reasoning is required in order to make possible the ascertainment of the proper application of the law and to enable the due carrying out of judicial control. See *Rallis* and *The Greek Communal Chamber*, 5 R.S.C.C. p. 11. See also *Jacovides* v. *The Republic* (1966) 3 C.L.R. 212 at p. 221. The whole object, of course, of the rule requiring reasons to be given for administrative decisions is to enable the person concerned as well as the Court on review to ascertain in each case whether the decision is well-founded in fact and in law. In *Zavros* v. *The Council for the Registration of Architects and Civil Engineers* (1969) 3 C.L.R. 310, the Court had this to say at p. 315 :-

> "It is evident that the whole object of the rule requiring reasons to be given for administrative decisions is to enable in the first instance the persons concerned and the Court on review, to ascertain in each case whether the decision is well founded in fact and in law (cp. Porismata Nomologhias, p.

183, first paragraph); and from this three propositions follow: (1) The reasons must be stated clearly and unambiguously; (2) they must be read in the sense in which reasonable persons affected thereby would understand them; (3) the decisions cannot be supported by reasons stated in terms not fulfilling the object of the rule."

See also *Kasapis* v. *Council for Registration of Architects and Civil Engineers*, (1967) 3 C.L.R. 270 at pp. 275—276.

In Re *Poyser* and *Mills' Arbitration* [1963] 1 All E.R., 612, Megaw, J. had this to say, on the same topic, at p. 616:-

"It is a very difficult matter to say whether that is properly to be treated as something wrong on the face of the award. I am bound to say this, and again I do not think that it was altogether disputed by counsel for the landlord, that a reason which is as jejune as that reason is not satisfactory, but in my view it goes further than that. The whole purpose of s. 12 of the Tribunals and Inquiries Act, 1958, was to enable persons whose property or interests were being affected by some administrative decision or some statutory arbitration to know, if the decision was against them, what the reasons for it were. Up to then, a person's property and other interests might have been gravely affected by a decision of some official, the decision might have been perfectly right, but the person against whom it was made was left with the real grievance that he was not told why the decision had been made. The purpose of s. 12 was to remedy that, and to remedy it in relation to arbitrations under the Agricultural Holdings Act, 1948. Now, Parliament having provided that reasons shall be given, in my view that must clearly be read as meaning that proper, adequate, reasons must be given; the reasons that are set out, whether they are right or wrong, must be reasons which not only will be intelligible, but also can reasonably be said to deal with the substantial points that have been raised, and in my

view it is right to consider that statutory provision as being a provision as to the form which the arbitration award shall take."

It is to be observed that the giving of reasons in England comes within the concept of error of law which includes the giving of reasons that are bad in law, or (if there is a duty to give reasons) inconsistent, unintelligible or otherwise substantially inadequate.

What amounts to due reasoning is a question of degree depending upon the nature of the decision concerned, but reasoning behind an administrative decision may be found either in the decision itself or in the official records related thereto.

Having heard both counsel, to whom I am indeed indebted for their assistance, and after directing myself to those authoritative pronouncements, I am of the opinion that the decision of the Council of Ministers is not duly reasoned was made on the strength of non-existing facts and, is therefore, contrary to the Constitution and the law and it was made in excess or abuse of powers vested in such organ.

I would, therefore, exercising my powers under Article 146, declare that the said decision is null and void and of no effect whatsoever. Regarding costs, I have decided that this is a proper case in which to award the applicant his costs. Order accordingly.

Sub judice decision annulled; order for costs as above.