IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NINOS LAMBROU,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH THE MINISTER OF EDUCATION AND ANOTHER,

Respondents.

(Case No. 94/69).

Educational Service—Schoolmaster—Disciplinary proceedings before the Educational Service Committee—Regulation 18(1) of Regulations 13/62 made by the Greek Communal Chamber in 1962—Precluding appearance with an advocate of educationalist facing disciplinary proceedings—In force until its repeal by section 72 of the Public Educational Service Law, 1969, (Law No. 10 of 1969)—Adherence by the respondent Committee to provisions of said Regulation does not render invalid the sub judice *disciplinary conviction and punishment—See further* infra.

Disciplinary proceedings—Article 12.5 of the Constitution—Applicable only to criminal proceedings and not to disciplinary proceedings—Disciplinary proceedings against educationalist—Not "proceedings for the determination of any civil rights and obligations of his or of any criminal charge" within Article 30 of the Constitution—Article 6 of the European Convention on Human Rights of 1950—Cf. also infra.

Natural Justice—Rules of—Principle of fair hearing—Application of the principle cannot be determined in abstracto*—But must be considered in the light of the special circumstances of each case—Educationalist facing disciplinary proceedings—Given full opportunity to defend himself but precluded from appearing with the assistance of an advocate—Rule of natural justice requiring an opportunity to be afforded to applicant to answer accusations against him—Not violated in the*

circumstances of the instant case—Rule or regulation 18(1) of Regulations 13/62 made by the then Greek Communal Chamber in 1962—Cf. infra.

Disciplinary conviction and punishment by the Educational Service Committee of educational officers (in the instant case, of a schoolmaster)—Need not be confirmed by the Minister of Education under sections 6 and 7 of the Greek Communal Chamber Law No. 8 of 1963—In view of the provisions of section 8(1) and (4) of the Competence of the Greek Communal Chamber (Transfer of Exercise) and the Ministry of Education Law, 1965 (Law No. 12 of 1965).

Disciplinary proceedings—Educational officers—Educational Service Committee etc.—See supra, passim.

Disciplinary conviction and punishment of public officers—Judicial control—Powers of the Administrative Court (viz. *the Supreme Court,* infra)*—Recourse under Article 146 of the Constitution against decisions of the Educational Service Committee acting as a disciplinary authority regarding educational officers—The Supreme Court dealing with such recourse—Not within its competence to interfere with the subjective evaluation of the relevant facts, as made by the Committee*—Sub judice *decision reasonably open to the Committee on the material before it.*

This is a recourse under Article 146 of the Constitution whereby the applicant complains against the termination of his services as a Schoolmaster, which was decided on December 30, 1968, by the Educational Service Committee—in the Ministry of Education—as a punishment for certain disciplinary offences. It is not in dispute that the said Committee is the appropriate organ for dealing with disciplinary matters regarding officers of the Educational Service.

It was argued on behalf of the applicant that the *sub judice* punishment should be annulled on two main grounds:

(1) Because the applicant was not allowed to be defended by an advocate in the relevant disciplinary proceedings before the Committee, a course which contravenes the rules of natural justice and Articles 12.5(c) and 30.2 of the Constitution.

(2) In any case, the findings of the Committee were not warranted on the material before it.

Article 12.5 of the Constitution provides:

"5. Every person charged with an offence has the following minimum rights:

(a) ..... (b) .. (c) to defend himself in person or through a lawyer of his own choosing ....."

Article 30.2 and 3(d) of the Constitution provides:

"1. No person .....

2. In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing ..... by an independent, impartial and competent court established by law .....

3. Every person has the right:

(a) .. (b) .. (c) .

(d) to have a lawyer of his own choice ..... ".

On the other hand, Regulation 18(1) of the Greek Communal Chamber Regulations 13/62, made in 1962, provides, *inter alia,* in relation to disciplinary proceedings, that appearance through an advocate is prohibited («Η διά συνηγόρου παράστασις άποκλείεται»).

Dismissing the recourse, the Court:

Held, (1) The adherence by the respondent Committee to the provisions of regulation 18(1) (*supra*), precluding appearance of an educational officer facing disciplinary proceedings with an advocate, has not resulted in rendering invalid, in any way, the *sub judice* disciplinary conviction and punishment.

(2) Article 12.5 of the Constitution (*supra*) is applicable only to criminal proceedings and not, also, to disciplinary proceedings.

(3) Article 30 of the Constitution relates to proceedings for the determination of civil rights and obligations or of any criminal charge (cf. Article 6 of the European Convention on Human Rights 1950). But

a disciplinary charge is not a criminal charge (see the decisions of the Commission of Human Rights of the Council of Europe in cases 423/58 (reported in Collection of Decisions of the Commission No. 1) and 1931/63 (reported in the Yearbook of the European Convention on Human Rights No. 7 at p. 212)). It was further decided by the said Commission in case 1329/62 (see Yearbook etc. No. 5, at p. 200) that Article 6 of the Convention—which corresponds to our Article 30 of the Constitution—applies only to proceedings before courts of law.

(4) (a) Even if, contrary to the above, it were to be held that Article 30 of the Constitution was applicable to the disciplinary proceedings against the applicant, and, therefore, by virtue of paragraph 2 of that Article (*supra*)—which corresponds to paragraph 1 of Article 6 of the European Convention on Human Rights—the applicant was entitled to a fair hearing before the respondent Committee, it must be borne in mind that in considering his case the Committee did not have to resolve any complicated legal issues but only they had to ascertain correctly the relevant facts, and that it has been decided by the European Commission of Human Rights in case No. 1013/61 (see Yearbook of the European Convention on Human Rights No. 5 at p. 158) that the application of the principle of fair hearing "cannot be determined in *abstracto* but must be considered in the light of the special circumstances of each case" and that "when a case does not give rise to any serious legal dispute but only necessitates a correct establishment of the facts, the barring of the parties from the right to be represented or assisted by practising lawyers in the procedure cannot be held to constitute a denial of a fair hearing".

(b) After a careful perusal of the record of the disciplinary proceedings against the applicant, I have reached the conclusion that the applicant, even though he appeared without an advocate, was given a full opportunity to defend himself

and thus, in the particular circumstances of the present case where no legal issues were involved, the rules of natural justice were not violated.

(5) (a) The disciplinary conviction of the applicant was, in my view, reasonably open to the respondent Committee, on the basis of the whole material before it. I am, therefore, of the opinion that the *sub judice* decision of the respondent Committee was warranted.

(b) In any case it is not within my competence, as an administrative Judge, to interfere with the subjective evaluation of the relevant facts, as made by the Committee (see, *inter alia*, *Enotiadou* v. *The Republic* (1971) 3 C.L.R. 409).

Recourse dismissed.
No order as to costs.

The facts sufficiently appear in the judgment of the learned President dismissing applicant's recourse against his disciplinary conviction and punishment by the respondent Educational Service Committee.

Cases referred to :

Haros and The Republic, 4 R.S.C.C. 39;

Enotiadou v. *The Republic* (1971) 3 C.L.R. 409;

Decisions of the Commission of Human Rights of the Council of Europe in cases Nos. 423/58 (see Collections of Decisions of the Commission No. 1), 1931/63 (see Yearbook of the European Convention on Human Rights No. 7 at 212), 1329/62 (see Yearbook etc. No. 5 at p. 200), 1013/61 (see Yearbook etc. No. 5, at p. 158).

Recourse.

Recourse against the termination of applicant's services as a schoolmaster by respondent No. 2, the Educational Service Committee, for disciplinary reasons.

K. Saveriades with *C. Adamides*, for the applicant.

G. Tornaritis, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:

TRIANTAFYLLIDES, P.: By this recourse the applicant complains against the termination of his services as a schoolmaster, which was decided on the 30th December, 1968, by the Educational Service Committee—in the Ministry of Education—for disciplinary reasons.

The applicant was found guilty of conduct which did not befit an educator, namely that between March and September, 1968, and particularly on the 5th September, 1968, he had behaved indecently with another person.

It has been contended by counsel for the applicant that the decision of the respondent Committee should be annulled because the applicant was not allowed by it to be defended by an advocate during the disciplinary proceedings before it.

It was not denied by counsel for the respondents that the applicant did ask to be allowed to appear before the Committee with an advocate and that his request was refused; but it has been argued that such refusal was the only proper course in view of regulation 18(1) of the Regulations made in 1962 by the Greek Communal Chamber in respect of the exercise of disciplinary powers in relation to schoolmasters, school-teachers and employees of communal schools; these Regulations were published on the 22nd June, 1962, in the Fourth Supplement to the official Gazette as decision No. 13 of the Greek Communal Chamber and will be referred to hereinafter as Regulations 13/62. Regulation 18(1) provides, *inter alia*, in relation to disciplinary proceedings, that appearance through an advocate is prohibited («Ἡ διὰ συνηγόρου παράστασις ἀποκλείεται»).

The first issue to be decided is whether or not Regulations 13/62 were in force at the time of the disciplinary trial of the applicant: They were made under the Organization of the Education Office Law, 1960 (Greek Communal Chamber Law 7/60), as amended by the Organization of the Education Office (Amendment)

Law, 1962 (Greek Communal Chamber Law 6/62). Law 7/60 was repealed in part and Law 6/62 was repealed as a whole by the Schoolmasters, Schoolteachers and Employees of Communal Schools (Exercise of Administrative Powers) Law, 1963 (Greek Communal Chamber Law 8/63); it was provided by section 11 of Law 8/63 that Regulations 13/62 were to continue to be in force in so far as they were compatible with such Law.

In 1965 there was enacted the Competence of the Greek Communal Chamber (Transfer of Exercise) and Ministry of Education Law 1965 (Law 12/65). By section 7 of this Law there was set up the respondent Educational Service Committee and it was provided by subsection (6) of section 7 that the Committee, by Rules made by it, may regulate the procedure to be generally followed by it and, particularly, any matter concerning the convening of its meetings and the procedure at such meetings, as well as the manner in which decisions are to be taken and the keeping of minutes: no such Rules had been made by the time when the applicant was dismissed from the service, by the Committee, for disciplinary reasons, as aforesaid.

By operation of sections 8 and 9 of Law 12/65 there continued to be in force Law 8/63, including, by virtue of section 11 of Law 8/63, Regulations 13/62, but subject to such modifications (including amendment, adaptation and repeal) as might be necessary to bring them into conformity with the organizational structure established under Law 12/65 (see sub-sections (3) and (4) of section 9 of such Law).

Though it may be correctly said that, to a certain extent, Regulations 13/62 ceased to be in force, originally due to incompatibility with provisions of Law 8/63 and later on due to incompatibility with provisions of Law 12/65, I have found nothing in relation to regulation 18(1) which should lead me to the conclusion that it ceased to be applicable in connection with disciplinary proceedings before the respondent Educational Service Committee, provided that in the place of the words "Disciplinary Board" there should, after the enactment of Law 12/65, be read the words "Educational Service Committee."

What has to be examined, next, is whether or not the adherence by the Committee to the provisions of regulation 18(1) has resulted in rendering invalid, in any way, its *sub judice* decision:

There did not exist in Cyprus, at the material time, a general rule, by virtue of either a constitutional or a legislative provision, to the effect that persons facing disciplinary proceedings should be allowed to be defended by an advocate. Such a rule was enacted, in relation to public officers (not including educationalists) by means of section 82(4) of the Public Service Law, 1967 (Law 33/67), and in relation to educationalists by means of section 72(4) of the Public Educational Service Law, 1969 (Law 10/69); thus regulation 18(1) was repealed after the *sub judice* decision of respondent 2.

It is correct that even prior to the enactment of Law 33/67 public officers were being allowed to be defended by advocates in disciplinary proceedings, but this was not done as a matter of Law but only by way of practice adopted by the Public Service Commission, and there existed no legislative provision to the contrary; on the other hand, there existed at the material time, in relation to educationalists, the aforementioned regulation 18(1) which precluded appearance with an advocate at disciplinary proceedings.

Article 12.5 of the Constitution, in view of the manner in which it has been worded (see, *inter alia*, the word "court" in sub-paragraph (e)), as well as in view of its nature, is applicable only to criminal proceedings, and not, also, to disciplinary proceedings.

Article 30, which relates to proceedings for the determination of civil rights and obligations or of any criminal charge, provides, by means of sub-paragraph (3) (d), that in such proceedings every person has the right "to have a lawyer of his own choice." Sub-paragraph (3) (d) has, obviously, been modelled after Article 6 (3) (c) of the European Convention on Human Rights of 1950. Its Article 6, like Article 30 of our Constitution, relates to the determination of civil rights and obligations or of any criminal charge.

A disciplinary charge is not, of course, a criminal

charge; also, in view of the decisions of the Commission of Human Rights of the Council of Europe in cases 423/58 (see Collection of Decisions of the Commission No. 1) and 1931/63 (see Yearbook of the European Convention on Human Rights No. 7 at p. 212), I am of the opinion that the disciplinary proceedings against the present applicant were not proceedings for the determination of any civil right or obligation of his.

It was, further, decided by the said Commission in case 1329/62 (see Yearbook of the European Convention on Human Rights No. 5 at p. 200) that Article 6 of the Convention—which corresponds to our Article 30—applies only to proceedings before courts of law.

Thus, it cannot be held that the regulation in question —regulation 18(1)—was applied, in the disciplinary proceedings against the applicant, in a manner violating any of our relevant constitutional provisions.

Even if, contrary to the above, it were to be held that Article 30 of the Constitution was applicable to the disciplinary proceedings against the applicant, and, therefore, by virtue of paragraph (2) of such Article—which corresponds to paragraph (1) of Article 6 of the European Convention on Human Rights—the applicant was entitled to a fair hearing before the respondent Committee, it must be borne in mind that in considering his case the Committee did not have to resolve any complicated legal issues but only had to ascertain correctly the relevant facts, and that it has been decided by the European Commission of Human Rights in case 1013/61 (see Yearbook of the European Convention on Human Rights No. 5 at p. 158) that the application of the principle of a fair hearing "cannot be determined in *abstracto* but must be considered in the light of the special circumstances of each case" and that "when a case does not give rise to any serious legal dispute but only necessitates a correct establishment of the facts, the barring of the parties from the right to be represented or assisted by practising lawyers in the procedure cannot be held to constitute a denial of a fair hearing." Thus, in the light of all the foregoing I am of the opinion that the application of the aforesaid regulation 18(1) did not deprive the applicant of a fair hearing.

Counsel for the applicant has relied on the case of *Haros and The Republic,* 4 R.S.C.C. 39, in which it was stated (at p. 44) that the rules of natural justice "should be adhered to in all cases of disciplinary control in the domain of public law."

The relevant rule of natural justice, which could be found to be applicable in the present instance, would be the one requiring that an opportunity be afforded to the applicant to answer the accusations made against him. After a careful perusal of the record of the disciplinary proceedings against him I have reached the conclusion that the applicant, even though he appeared without an advocate, was given a full opportunity to defend himself, and thus, in the particular circumstances of the present case, the said rule of natural justice was not violated.

The next matter with which I have to deal is the contention of counsel for the applicant that the *sub judice* decision of the respondent Committee ought to be confirmed under sections 6 and 7 of Greek Communal Chamber Law 8/63 by the Minister of Education, as the organ in which there has been vested under section 4 of Law 12/65 the competence of the Committee of Administration of the Greek Communal Chamber. I am of the opinion that the aforesaid provisions of Law 8/63 are, in view of sub-sections (1) and (4) of section 8 of Law 12/65, no longer applicable to a decision of the Educational Service Committee in a disciplinary matter, because of the fact that such Committee, which is established under Law 12/65, as amended by Law 10/69, is an independent organ in the Ministry of Education and not an organ subordinate to the Minister of Education.

In conclusion, I should state that the disciplinary conviction of the applicant was, in my view, reasonably open to the respondent Committee, on the basis of the whole material before it. There existed, indeed, medical evidence which tended to indicate that the applicant was innocent, but the Committee knew about this evidence and it seems that the other testimony implicating the applicant was regarded as being such overwhelming proof of his guilt that, eventually, the applicant was pronounced guilty; and, as already stated, I am of the opinion that the *sub judice* decision of the Committee

was, in the circumstances, warranted. In any case, it is not within my competence, as an administrative Judge, to interfere with the subjective evaluation of the relevant facts, as made by the Committee (see, *inter alia*, *Enotiadou* v. *The Republic* (1971) 3 C.L.R. 409).

For all the aforementioned reasons the present recourse is dismissed; but, in view of the fact that what mainly caused its filing was the existence of the anachronistic regulation 18(1) which, fortunately, is no longer in force, I am not prepared to order the applicant to pay costs.

Application dismissed;
no order as to costs.