1979 February 5

[HADJIANASTASSIOU, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTHI I. IORDANOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(*Case No.* 178/77).

Natural Justice—Educational officers—Disciplinary offences—Disciplinary conviction and punishment—Not necessary to call upon the defendant to plead in mitigation of punishment in every case, particularly when he is represented by counsel.

The applicant, a secondary education school mistress, was tried by the respondent Educational Service Committee of certain disciplinary offences. The trial lasted for three days, in the course of which applicant was defended by counsel. The decision of the Committee was announced on June 7, 1977, in the presence of applicant' s counsel and she was thereby found guilty on three counts and was discharged on the remaining three counts. Before imposing punishment the Committee had inquired whether applicant had any previous convictions; and when it was stated that she was a first offender her counsel was asked whether he had anything to say and his reply was that he had nothing more to add. Thereupon the Committee proceeded to impose punishment and the applicant was reprimanded on count 'A' was fined £1 on count 'C' and was severely reprimanded on count 'St'.

Applicant was informed, by letter of the Chairman of the respondent Committee dated June 8, 1977 of the result of the disciplinary proceedings and the punishment imposed.

Hence the present recourse:

Counsel for the applicant contended that in imposing a dis-

ciplinary punishment the respondent Committee failed to afford the applicant the opportunity to make a plea in mitigation of punishment after she was informed that she was found guilty of the disciplinary offences concerned.

5 *Held,* that it is not necessary in every case in disciplinary proceedings to call upon the defendant to plead in mitigation, particularly when he is represented by counsel; that having regard to the facts of the case the argument of counsel must fail because when the decision of the Committee was delivered the 10 applicant was not present and that this Court takes it that the reason was that she was attending school; that, furthermore, *it is clear that counsel had been invited to plead in mitigation,* and quite rightly he added that he had nothing more to add once his client had no previous convictions and the punishment 15 imposed on applicant was out of all proportions and utterly very lenient indeed; and that, accordingly, the recourse will be dismissed because the *sub judice* decision was neither contrary to any of the provisions of the Constitution or of any law or in abuse of powers.

20 *Application dismissed.*

Cases referred to:

Iordanous v. *Republic* (1974) 3 C.L.R. 194 at pp. 201-202:

Kilduff v. *Wilson* [1939] 1 All E.R. 429 at p. 444;

Fisentzides v. *Republic* (1971) 3 C.L.R. 80;

25 *Kyprianou* v. *Public Service Commission* (1973) 3 C.L.R. 206 at pp. 223-24;

Republic v. *Georghiades* (1972) 3 C.L.R. 594;

Byrne v. *Kinematograph Renters Society Ltd.,* [1958] 2 All E.R. 579 at p. 599;

30 *R.* v. *Birmingham City Justices,* ex parte *Chris Foreign Foods (Wholesalers) Ltd.,* [1970] 3 All E.R. 945 at p. 949;

Pett v. *Greyhound Racing Association Ltd.* [1968] 2 All E.R. 545 at p. 549;

Jackson & Co. v. *Napper, Re Schmidt's Trade Mark,* 35 Ch. 35 D. 162;

Maynard v. *Osmond* [1977] 1 All E.R. 64 at p. 71.

Recourse.

Recourse against the decision of the respondent whereby

applicant was found guilty of three disciplinary offences and punishment was imposed on her.

A. Emilianides, for the applicant.

A. Angelides, for the respondent.

Cur. adv. vult. 5

HADJIANASTASSIOU J. read the following judgment. In these proceedings, under Article 146 of the Constitution, the applicant, Anthi I. Iordanou of Nicosia, a high school teacher, seeks a declaration that the decision of the Educational Committee dated June 7, 1977, in a case of disciplinary proceedings, 10 is null and void and of no effect whatsoever.

The grounds of law relied upon in this recourse, are these:- (1) that the Educational Committee has failed during the trial of a disciplinary matter to afford to the applicant every facility to put forward reasons in mitigation of the punishment imposed 15 on her, and that the said Committee deprived her of her legal rights, to know her own stand, in contravention of the decision of the Supreme Court in *Iordanous* v. *The Republic of Cyprus, through the Public Service Commission*, (1974) 3 C.L.R. 194; and (2) that during the hearing of the case, the rules of hearing 20 a criminal case have not been followed, and that the said hearing has not been carried out in a manner following the rules in a criminal case.

The facts are simple. The applicant is a high school teacher at the Technical School of Nicosia, and because she has com- 25 mitted certain acts amounting to a contravention of any of the duties or obligations of a public officer, disciplinary proceedings were taken against her.

On January 27, 1977, the Educational Committee started the investigation of the case and the trial lasted for three days. 30 The defendant was defended most ably by a senior counsel, Mr. Emilianides, who has done his very best to help the said Committee in reaching a correct verdict.

On June 7, 1977, the Committee issued their decision and found the defendant guilty on three counts only. The punish- 35 ment imposed on count 'A' was a reprimand; on count 'C' £1 fine, and on count "St" a severe reprimand.

According to the long minutes which the Committee has

kept, the Committee when it announced its decision, inquired whether the defendant had any previous convictions, and when it was assured that she was a first offender, turned to her counsel and inquired whether he had anything to say, but his reply was
5 that he had nothing more to add.

The applicant, feeling aggrieved because a punishment was imposed on her, filed the present recourse and her application was based on the fact that the Rules of Procedure have not been followed by the Chairman of the Committee, who was helping
10 counsel acting on behalf of the Committee, and that he carried out the task of the prosecutor during the hearing of that case. I must confess that this is a most damning statement against the Chairman himself and there is not even one shred of evidence in the long minutes kept by the said Committee, and not even
15 one single intervention by counsel defending the applicant during the whole trial of the case.

There is no doubt that on June 8, 1977, the Chairman of the Educational Committee, for purposes of record, addressed a letter to the applicant, through the Director of the Technical
20 School, informing her that the Educational Service Committee discharged her from counts 2(b), 3(c), and (d). Furthermore, she was informed that she was found guilty on the rest of the counts and that a punishment was imposed on her. A copy of this letter was sent to both the Accountant-General and Mr.
25 Emilianides.

On June 26, 1977, counsel appearing for the respondent opposed the said application and alleged that the Educational Committee has acted lawfully in exercising its discretionary power, having examined carefully all facts and circumstances
30 relating to this case. In support of the opposition, counsel had alleged that the respondents deny the allegation in paragraph 4 of the application, and alleged that after the delivery of the decision of the Committee, when the applicant was found guilty in some of the counts, and before punishment was imposed
35 on her, she was asked through her counsel if she had anything to say, and her counsel said that he had nothing to add. Furthermore, it was strongly denied that the Chairman intervened during the hearing of the case in the way suggested, and that nowhere the minutes support the allegation of the applicant.

40 The only question raised finally was that the Committee,

in imposing a disciplinary punishment, failed to afford the applicant the opportunity to make a plea of mitigation of punishment, after she was informed that she was found guilty of the disciplinary offences concerned.

Is the complaint of the applicant a valid one? It has been said that non-observance of the appropriate disciplinary procedure in some particular does not necessarily render a disciplinary decision void. 5

In *Kilduff* v. *Wilson*, [1939] 1 All E.R. 429, Tucker, J., had this to say at p. 444:- 10

"I have not been satisfied by the authorities quoted by Mr. Wooll, or by his argument so far, that even if there had been these unlawful or invalid proceedings, provided the plaintiff is reinstated and given all the necessary declarations and back pay, he has still got an action for damages for what is called the infringement of his status as a constable. I am, further, far from satisfied—in fact, I am very dissatisfied—with regard to the claim for conversion of his statutory deductions. I do not think that there is any case of conversion made out on the facts of this case at all. There was no specific earmarked fund or money in a bag, and at most what was done here amounted to the payment by a debtor to the wrong person, with the result that he has got to pay again the right person." 15 20

In *Fisentzides* v. *The Republic*, (*Public Service Commission*) (1971) 3 C.L.R. 80, Stavrinides, J., dealing with the question of pleading in mitigation, had this to say at p. 86:- 25

"Nor could it be argued by the respondent that the offences of which the applicant had been found guilty being as in truth they were, very serious, the failure to give him the opportunity of pleading in mitigation made no difference as regards punishment, because he would have been dismissed whatever was said in his favour. As the Supreme Court said in *Pantelidou and The Republic*, 4 R.S.C.C. 100, at p. 106, G and A, p. 107, A: 30 35

'...strict adherence to the principle concerned is most essential, in spite of the fact that such a course may occasionally result in causing some delay and that the reasons

for dismissing a public officer may sometimes be prima facie, so overwhelming as to render it improbable that anything will be forthcoming from him which would render his dismissal unnecessary, and the more so because in Cyprus disciplinary control is vested, not in the appropriate Ministers or other Heads of Departments who are expected to have considerable direct and personal knowledge of their subordinates, but in an extradepartmental organ like the Commission, which usually acts upon papers placed before it and contained in the personal file of the officer concerned.'

From what I have said so far it follows that if the applicant does not succeed on any other ground the subject decision must be annulled in part, viz. as regards the actual punishment imposed."

In *Kyprianou* v. *The Public Service Commission*, (1973) 3 C.L.R. 206, Triantafyllides P., dealing with the very same point, said at pp. 223–224:-

"In relation, next, to the argument of counsel for the applicant to the effect that the applicant ought to have been heard, by the Commission, in mitigation, after he had been found guilty of the disciplinary charges and before any punishment was imposed on him, I am of the opinion that this is a valid argument in the light especially of the fact that this was, indeed, a case in which the Commission met with quite some difficulty in dealing with the question of punishment. The failure to hear the applicant in mitigation, deprived the Commission of an essential opportunity of knowing the attitude of the applicant, after he had been informed that he had been found guilty of the disciplinary offences concerned; it is true that his attitude during the hearing before the Commission might have created the impression that it was no longer possible for him to behave in a co-operative manner towards his superiors in the Department and, therefore, his services had to be terminated; but, on the other hand, it was reasonably possible that, once the applicant had come to know the outcome of the disciplinary proceedings (in which he was entitled to defend himself as strenuously as he thought fit to do), he would have made such a plea in mitigation

which, coupled with the fact that some members of the Commission had found that he had misconducted himself due to excessive zeal, could have persuaded at least a majority of the members of the Commission—(two of the members of which were in any case against the termination 5 of his services)—not to take such a drastic step as putting an end to his career in the public service.

Also, the need to allow a plea in mitigation before deciding about punishment for a disciplinary offence has been stressed in the case of *Fysentzides* v. *The Republic*, (1971) 10 3 C.L.R. 80 (see, too, *Markoullides* and *The Republic*, 3 R.S.C.C. 30).

It follows, therefore, that the decision of the respondent has to be annulled to the extent to which it relates to the punishment imposed on the applicant, as being a decision 15 reached by means of exercising in a defective manner the relevant discretionary powers."

In *Iordanis Iordanous* v. *The Republic* (*Public Service* Commission), (1974) 3 C.L.R. 194, Triantafyllides P., dealing with the same point, adopted and followed his previous stand and 20 said at pp. 201-202:-

"A series of cases, such as *Markoullides and The Republic*, 1 R.S.C.C. 30, 35, *Morsis and The Republic*, 4 R.S.C.C. 133, 138, *Fisentzides* v. *The Republic*, (1971) 3 C.L.R. 80 at p. 86 and *Kyprianou* v. *The Public Service Commission* (1973) 3 C.L.R. 206, at p. 224, leave no room for doubt 25 that this complaint of counsel for the applicant is a valid one, both as a matter of natural justice and, also, because, the failure to afford the applicant an opportunity to make, if he wished, a plea in mitigation of punishment deprived 30 the Commission of the possibility of knowing his attitude, as a member of the public service, after he had been informed that he had been found guilty of the disciplinary offences concerned, such attitutde was a material fact, to be weighed with all other relevant considerations; had it 35 been known it might have made the Commission take a different decision as regards the punishment to be imposed on the applicant; and, in this respect, it is worth bearing in mind that Mr. Lapas, a member of the Commission, was

of the opinion that the withholding of one of applicant's annual increments only was sufficient punishment........

It can be judicially noticed that it is the invariable practice to allow an accused, who has been found guilty by a Court in a criminal case after a summary trial, to be heard in mitigation of sentence; and, in my view, the same applies *mutatis mutandis* to the corresponding situation in proceedings before the Commission.

For all the foregoing reasons this recourse succeeds in so far as it is aimed at the part of the *sub judice* decision of the respondent by means of which disciplinary punishment was imposed on the applicant and, consequently, such punishment is annulled; it is now up to the Commission to reconsider the question of such punishment afresh, in accordance with the appropriate procedure."

In *The Republic (Public Service Commission)* v. *Lefkos Georghiades*, (1972) 3 C.L.R. 594, dealing with the question of natural justice, I had this to say at pp. 614-615:-

"With the greatest respect to the view of the learned trial Judge, and because the present appeal revolves itself into the question whether the enquiry was conducted with due regard to the rights accorded by the principles of natural justice to the applicant as the person against whom it was directed, I intend to review some of the authorities, since these rights have been defined in varying language in a large number of cases covering a wide field. But, at the same time, I must point out that the question whether the requirements of natural justice have been met by the procedure adopted, in any given case, must depend to a great extent on the facts and circumstances of the case. As Tucker, L.J., said in *Russell* v. *Duke of Norfolk* [1949] 1 All E.R. 109 at p. 118: 'There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the Tribunal is acting, the subject matter that is being dealt with, and so forth.'

Lord Atkin expressed a similar view in these words in

General Medical Council v. *Spackman* [1943] 2 All E.R. 337 at p. 341: 'Some analogy exists no doubt between the various procedures of this and other not strictly judicial bodies. But I cannot think that the procedure, which may be very just in deciding whether to close a school or an insanitary house is necessarily right in deciding a charge of infamous conduct against a professional man. I would, therefore, demur to any suggestion that the words of Lord Loreburn L.C., in *Board of Education* v. *Rice* ([1911] A.C. 179 at p. 182) affords a complete guide to the General Medical Council in the exercise of their duties."

In *Byrne* v. *Kinematograph Renters Society, Ltd.*, [1958] 2 All E.R. 579 Harman, J., (as he then was) had this to say at p. 599:-

"What, then, are the requirements of natural justice in a case of this kind? First, I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case; and, thirdly, of course, that the Tribunal should act in good faith. I do not think that there really is anything more."

In *R* v. *Birmingham City Justice ex parte Chris Foreign Foods (Wholesalers) Ltd.*, [1970] 3 All E.R. 945, Lord Parker, C.J., speaking about impartiality and fairness, had this to say at p. 949:-

"But the point where I feel that the rules of natural justice in their limited application to such a case as this, limited to openness, impartiality and fairness, have been broken, is when the justice retired with the two officials in order, as he puts it, to take advice, and the three of them then came back into Court and he announced his decision. It seems to me that in a case such as this a justice must be very careful not to take any fresh advice or hear any fresh evidence in the absence of the objectors, unless he returns and enables the objectors to know what the advice is that he has received thus enabling them to deal with it."

Later on he said:-

"It seems to me that in the present case the rules of natural justice in their limited, and very limited, application to a

case such as this have been broken in the present case, and I would let the writ issue."

In *Pett* v. *Greyhound Racing Association, Ltd.*, [1968] 2 All E.R. 545, Lord Denning, M.R. had this to say at p. 549:-

5 "If he is found guilty, he may be suspended or his licence may not be renewed. The charge concerns his reputation and his livelihood. On such an inquiry, I think that he is entitled not only to appear by himself but also to appoint an agent to act for him......I should have thought, therefore, 10 that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor."

(See also *Jackson & Co.* v. *Napper, Re Schmidt's Trade Mark*. 35 Ch. D. 162.)

15 In *Maynard* v. *Osmond*, [1977] 1 All E.R. 64, Griffiths, J., said at p. 71:-

"For my part, I consider the right to appoint an agent to make an application under a trade marks Act, as in *Jackson & Co* v. *Napper* ([1886] 35 Ch. D. 162), and the right to send 20 an agent to object to the valuation of a house, as in *R.* v. *St Mary Abbots Kensington Assessment Committee* ([1891] 1 Q.B. 378), to be very far removed from the right to legal representation before a domestic tribunal in the latter part of the 20th century. If I had to choose between applying 25 the general principle of the common law, that a man may appoint an agent to act on his behalf, or the principle that a domestic tribunal may order its own procedures provided it does so in accordance with natural justice, I prefer to apply the latter principle."

30 Having reviewed the authorities at length, I do not read them as laying down that in every case in disciplinary proceedings, it is necessary to call upon the defendant to plead in mitigation, particularly when he is represented by counsel.

With this in mind, and having regard to the facts of this 35 case, the argument of counsel fails, because when the decision of the Chairman of the Committee was delivered, the applicant was not present, and I take it that the reason was that she was

attending her school. Furthermore, it is clear that counsel had been invited to plead in mitigation, and quite rightly, in my view, counsel added that he had nothing more to add, once his client had no previous convictions and the punishment imposed on her was out of all proportion and utterly very lenient indeed. 5

I would, therefore, dismiss this recourse, because the decision was neither contrary to any of the provisions of the Constitution or of any law or was made in abuse of powers vested in that organ. 10

In these circumstances, I do not propose making an order for costs in favour of the respondent.

Order accordingly, no order as to costs.

Application dismissed.
No order as to costs. 15