

1979 August 4

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS GEORGHIADES AND ANOTHER,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF INTERIOR,

Respondent.

(Cases Nos. 452/78, 466/78).

Disciplinary proceedings—Set in motion under the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978 (Laws 3/77, 38/77 and 12/78) and the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978, Suspension of Proceedings Law, 1978 (Law 57/78)— 5
Competent organ to make interdictions was Council of Ministers under section 3(3) of Law 3/77 and not the various appropriate authorities under the relevant Laws—See Veis and Others v. The Republic (reported in this Part at p. 390 ante)—Sub Judice interdictions annulled but execution of judgment stayed for six 10
weeks.

The applicants in these recourses challenged decisions by means of which they were interdicted as a result of disciplinary proceedings which were set in motion against them under the provisions of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws, 1977 to 1978 (Laws 3/77, 38/77, 12/78 and 57/78). 15

The cases of both applicants were remitted to the Chief of Police by the Council of Ministers, under section 4 of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978, Suspension of Proceedings Law, 1978 (Law 57/78), on November 2, 1978; and it was common ground that in both instances investigations had commenced in relation 20

to the applicants under the provisions of Law 3/77, and were completed before their cases were remitted as above under section 4 of Law 57/78. Applicant in Case No. 452/78, who is a Chief Superintendent of Police, was interdicted by a decision
 5 taken by the respondent Minister of Interior, on the recommendation of the Chief of Police under regulation 39(1) of the Police (Discipline) Regulations, 1958 (as amended); and applicant in Case No. 466/78, who is a Police Inspector, was interdicted by a decision taken by the Chief of Police, with the
 10 approval of the respondent Minister of Interior under regulation 23 of the said Police (Discipline) Regulations.

Held, that neither the respondent Minister of Interior nor the Chief of Police could validly interdict the two applicants under the aforementioned regulations 39(1) and 23, respectively; that
 15 at all material times the only competent organ empowered to interdict them, in relation to the disciplinary proceedings instituted against them under Laws 3/77 to 57/78, was the Council of Ministers, under subsection (3) of section 3 of Law 3/77, as amended by Law 38/77; and that, accordingly, the *sub judice*
 20 interdictions of the applicants must be annulled (*reasons set out in the judgment in Veis and Others v. The Republic (reported in this Part at p. 390 ante) adopted mutatis mutandis for the purpose of the present cases and deemed to form part of this judgment*).

(2) That the execution of this judgment will be stayed for the
 25 period of six weeks during which an appeal may be made against it (see the *Veis* case, *supra*).

*Sub judice interdictions annulled.
 Stay of execution of this judgment for six weeks.*

30 *Per curiam*: In any event, even if this Court had not annulled the *sub judice* interdictions of the applicants it would not—for the reasons explained in the *Veis* case, *supra*, regarding the aspect of the contravention of Article 28 of the Constitution—have been prepared to confirm such
 35 interdictions under Article 146.4(a) of the Constitution.

Cases referred to:

Veis and Others v. Republic (reported in this Part at p. 390 *ante*).

Recourses.

Recourses against the decision of the respondent by means of

which the applicants were interdicted as a result of disciplinary proceedings which were set in motion against them under the provisions of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws, 1977 to 1978.

L. N. Clerides, for the applicants.

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V. Aristodemou, Counsel of the Republic, for the Respondent.

Cur. adv. vult.

TRIANTAFYLLIDES P. read the following judgment. In these two cases, which were heard together in view of their nature, the applicants (*Georghios Georghiades* in 452/78 and *Andreas Hadjisavvas* in 466/78) challenge decisions by means of which they were interdicted as a result of disciplinary proceedings which were set in motion against them under the provisions of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws, 1977 to 1978 (Laws 3/77, 38/77, 12/78 and 57/78).

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The applicant in 452/78, who is a Chief Superintendent of Police, was interdicted by a decision taken by the respondent Minister of Interior, on the recommendation of the Chief of Police, on November 9, 1978 (see *exhibit 3*), under regulation 39(1) of the Police (Discipline) Regulations, 1958 (see No. 280 in Supplement No. 3 to the Cyprus Gazette of April 30, 1958), as amended, particularly in this connection, by the Police (Discipline) (Amendment) Regulations, 1976 (see No. 40 in the Third Supplement, Part I, to the Official Gazette of the Republic of March 26, 1976); he was notified of the said decision by means of a letter of the respondent Minister of Interior dated November 9, 1978 (see *exhibit 1*).

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The applicant in 466/78, who is a Police Inspector, was interdicted by a decision taken by the Chief of Police, with the approval of the respondent Minister of Interior, on November 9, 1978 (see *exhibit 4*), under regulation 23 of the aforesaid Police (Discipline) Regulations, 1958, as amended, particularly in this connection, by the Police (Discipline) (Amendment) Regulations, 1968 (see No. 375 in the Third Supplement to the Official Gazette of the Republic of June 7, 1968) and by the Police (Discipline) (Amendment) Regulations, 1975 (see No. 178 in the Third

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Supplement, Part I, to the Official Gazette of the Republic of September 26, 1975); the said decision was communicated to him by means of a letter of the Nicosia Divisional Police Commander dated November 9, 1978 (see *exhibit 2*).

5 The cases of both applicants were remitted to the Chief of Police by the Council of Ministers, under section 4 of the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Laws 1977 to 1978, Suspension of Proceedings Law, 1978 (Law 57/78), on November 2, 1978 (see *exhibits C1 and C2*).

10 It is common ground that in both instances investigations had commenced in relation to the applicants under the provisions of Law 3/77, and were completed before their cases were remitted, as aforesaid, under section 4 of Law 57/78.

For the reasons set out in the judgment delivered by me, on
15 July 30, 1979, in *Veis and others v. The Republic* (reported in this Part at p. 390 *ante*), and which need not be repeated in this judgment but are adopted *mutatis mutandis* for the purposes of the present cases and should be deemed to form part of this judgment, I hold that neither the respondent Minister of Interior
20 nor the Chief of Police could validly interdict the two applicants under the aforementioned regulations 39(1) and 23, respectively. At all material times the only competent organ empowered to interdict them, in relation to the disciplinary proceedings instituted against them under Laws 3/77 to 57/78, was the Council of
25 Ministers, under subsection (3) of section 3 of Law 3/77, as amended by Law 38/77.

Consequently, the *sub judice* interdictions of the applicants are annulled and it is now up to the Council of Ministers to decide whether or not they should be interdicted.

30 In any event, even if I had not annulled the *sub judice* interdictions of the applicants I would not—for the reasons already explained by me in the *Veis* case *supra*, regarding the aspect of the contravention of Article 28 of the Constitution—have been prepared to confirm such interdictions under Article 146.4(a)
35 of the Constitution.

In line with the course adopted in the *Veis* case, *supra*, I

hereby stay the execution of this judgment for the period of six weeks during which an appeal may be made against it; and, in the light of all pertinent considerations, I have decided to make no order as to the costs of the present proceedings.

Sub judice decisions annulled. Stay of execution for six weeks. No order as to costs. 5