

1981 December 23

[DEMETRIADES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ARGYROS KYRIACOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 9/80).

*Administrative law—Executory act—Meaning—Confirmatory act
—Cannot be made the subject of a recourse under Article 146
of the Constitution—Public Officer—Interdiction pending inquiry
into commission of disciplinary offences—No recourse against
interdiction—Twenty-six disciplinary charges preferred against
5 applicant—Applicant applying for termination of interdiction
following withdrawal of ten of the charges—Decision turning
down his application a confirmatory of the previous decision
to interdict him and cannot be made the subject of a recourse
10 under the above Article.*

The applicant was a permanent member of the Public Service of the Republic holding the post of Lay Worker in the Department of Medical Services and was posted at St. Charalambos Home for the Disabled at Larnaca. The Director-General Ministry of Health having received complaints that applicant may have committed disciplinary offences by letter dated 21.2.1978 informed the Public Service Commission that the Minister of Health ordered an inquiry into the Commission of such offences, and submitted, by relying on sections 80 and 84 of the Public Service Law, 1967 (Law 33/67) that applicant should in the public interest, be interdicted until the final determination of the case.

The Public Service Commission met on February 22,

1978 and decided to interdict applicant. This decision was communicated to applicant on the same day but he filed no recourse against it.

Finally there were preferred against applicant 26 disciplinary charges and the hearing of the proceedings started on the 18th September, 1979. On the 24th September, 1979, the applicant was acquitted on charges 17 to 26 after leave was granted to counsel appearing for the Prosecuting Authority to withdraw same. 5

On the 5th October, 1979, counsel representing the applicant addressed a letter to the Public Service Commission asking on his behalf that, because of his acquittal on the said 10 charges, and as he believed that the reasons for which his client had been interdicted had ceased to exist, his interdiction ought to be terminated immediately. 10 15

The Public Service Commission met on the 24th October, 1979, and after taking into consideration applicant's counsel letter and an advice of the Deputy Attorney-General on the matter, reached the conclusion not to terminate his interdiction before the final determination of the case. This decision was communicated to counsel for the applicant by letter dated the 31st October, 1979 and is the subject of this recourse. 20

Counsel for the respondent contended that the *sub judice* decision was not of an executory nature but a confirmatory of the previous decision to interdict applicant and as such it could not be challenged by a recourse. 25

Counsel for the applicant submitted that it is not the decision to interdict him that is challenged by this recourse, but the failure of the respondents to recognise that the applicant's interdiction came to an end, in view of the developments which supervened during the disciplinary proceedings, namely the acquittal of the applicant on 10 out of the 26 charges preferred against him. 30

Held, that not every act emanating from an administrative organ can be made the subject of a recourse, but only those which are of an executory nature; that the main element of the concept of an executory act is the direct production of a legal situation concerning the subject and entailing its direct execution 35

by administrative means; that the remaining 16 charges pending then against applicant were for offences which are considered to be not only of a nature unbecoming for a civil servant, but, also, punishable by the Criminal Code, i.e. insults, assaults, unlawful possession of firearms and offences against public order; that these charges formed part of the original complaint of the Director-General of the Ministry of Health on which the Public Service Commission based its decision for the interdiction of the applicant; that, therefore, the decision of the Commission, after the letter of counsel for the applicant, not to terminate his interdiction, was not based on any new facts before it, and for this reason, such decision can only be held to be a confirmatory and not an executory act and as such it cannot be made the subject of a recourse (see *Economides v. The Republic* (1980) 3 C.L.R. 219 at pp. 223, 224); accordingly the recourse must fail.

Application dismissed.

Cases referred to:

Economides v. The Republic (1980) 3 C.L.R. 219 at pp. 223, 224.

Recourse.

Recourse against the refusal of the respondent to terminate applicant's interdiction.

C. L. Clerides, for the applicant.

A. Papasavvas, Counsel of the Republic, for the respondent.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. By the present recourse the applicant prays for a declaration that the act and/or decision of the respondents, which was communicated to his counsel by letter dated 31st October, 1979, not to terminate the interdiction imposed on him on the 22nd February, 1978, is null and void and of no effect whatsoever.

The applicant was a permanent member of the Civil Service of the Republic. He held the post of Lay Worker in the Department of Medical Services and was posted at St. Charalambos' Home for the Disabled, at Larnaca.

As a result of a number of complaints made to the Ministry of Health by inmates of the said Home against the applicant,

and which complaints related to assaults, indecent assaults committed against female labourers of the Home, as well as to uttering insulting words against the person of the late President of the Republic, the Director General of the Ministry of Health informed in writing, on the 21st February, 1978, the President of the Public Service Commission that the Minister of Health had ordered an inquiry into the commission of disciplinary offences by him and submitted that, in view of the seriousness of the complaints and the fact that the applicant was in charge of the personnel of the Home, he should, in the public interest, be interdicted until the final determination of the case. 5 10

The relevant legislative provisions on which the General Director of the Ministry of Health had based his above submission are sections 80 and 84 of the Public Service Law, 1967 (Law 33/67), which read as follows:- 15

“S.80 If it is reported to the appropriate authority concerned that a public officer may have committed a disciplinary offence the appropriate authority shall forthwith—

- (a) if the offence is one of those specified in Part I of the First Schedule, cause a departmental inquiry to be made in such manner as the appropriate authority may direct and proceed as provided in section 81: 20

Provided that, if the appropriate authority is of opinion that, owing to the seriousness of the offence or the circumstances under which it was committed, it should entail a more serious punishment, it may refer the matter to the Commission, in which case it shall proceed under paragraph (b); 25

- (b) in any other case, cause an investigation to be made in the prescribed manner and then proceed as provided in section 82. 30

Provided that until Regulations are made prescribing the manner of investigation, the Regulations set out in Part I of the Second Schedule apply”.

“S.84 (1) 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 35

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.

5 (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:

10 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.

15 (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. If he is found guilty and the punishment is other than dismissal, the officer may be refunded such portion of his emoluments as the Commission may think fit. If the punishment
20 imposed on the officer is dismissal, the officer shall receive no emoluments in respect of the period from the date of his conviction to the date of his dismissal”.

25 Acting on the aforesaid information, the Public Service Commission, at its meeting dated the 22nd February, 1978, decided to interdict the applicant. Such decision appears in *Appendix 3* attached to the Opposition in this recourse and reads as follows:-

30 “The Director-General, Ministry of Health, by his letter No. Y.Y.407/61/8 of 21.2.1978, informed the Commission that an investigation has been directed with a view to instituting disciplinary proceedings against Mr. Argyros Kyriacou, Lay Worker (St. Haralambos’ Home for the Disabled), in the Department of Medical Services, for a number of serious offences allegedly committed by him.

35 In view of the nature of the offences and in order to facilitate the investigation, the Director-General, Ministry of Health, considers it expedient that the said officer should be interdicted under the provisions of Article 84(1) of Law No. 33/67.

In view of the investigation that has been directed against Mr. Kyriacou, the Commission decided that it is in the public interest that the officer in question should cease to exercise the powers and functions of his Office pending the investigation and until the final disposal of the case. 5
The Commission further decided that Mr. Kyriacou should be interdicted from the exercise of the powers and functions of his Office as from the 23rd February, 1978.

During the period of his interdiction, Mr. Kyriacou will be allowed to receive one half of his emoluments". 10

The Public Service Commission communicated their decision to the applicant by letter, on the same day (see *Appendix 4*), against which the applicant had filed no recourse.

Finally there were preferred against him 26 disciplinary charges and the hearing of the proceedings started on the 18th September, 15
1979. On the 24th September, 1979, the applicant was acquitted on charges 17 to 26 after leave was granted to counsel appearing for the Prosecuting Authority to withdraw same.

On the 5th October, 1979, counsel representing the applicant addressed a letter to the Public Service Commission asking on 20
his behalf that, because of his acquittal on the said 10 charges, and as he believed that the reasons for which his client had been interdicted had ceased to exist, his interdiction ought to be terminated immediately. Copy of the above letter of counsel for the applicant is attached to the Opposition as *Appendix 6*. 25

The Public Service Commission, at its meeting of the 24th October, 1979, after taking into consideration applicant's counsel letter and an advice of the Deputy Attorney-General on the matter, reached the conclusion not to terminate his interdiction before the final determination of the case. This decision, 30
which was communicated to counsel for the applicant by letter dated the 31st October, 1979, is the subject of this recourse.

The decision reached by the Public Service Commission on the 24th October, 1979 and the letter addressed to counsel on the 31st October, 1979 are appended to my decision as 35
Appendixes A and B.

Before proceeding any further, it is pertinent to examine,

at this stage, one of the main submissions put forward by counsel for the respondents, namely that the *sub judice* decision is not of an executory nature, but a confirmatory one of their previous decision to interdict the applicant, which, as it is admitted, 5 has not been challenged by recourse. With regard to the above submission of counsel for the respondents, learned counsel for the applicant has stressed that it is not the decision to interdict him that is challenged by this recourse, but the failure of the respondents to recognise that the applicant's interdiction 10 came to an end, in view of the developments which supervened during the disciplinary proceedings, namely the acquittal of the applicant on 10 out of the 26 charges preferred against him.

Under Article 146 of the Constitution this Court has exclusive jurisdiction to adjudicate finally on a recourse made to it on 15 a complaint that the decision or act or omission of any organ authority or person exercising executive or administrative authority is contrary to any of the provisions of the Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

20 In the present case the question that arises for consideration is whether the *sub judice* act is one for which the applicant can avail himself of the jurisdiction of this Court. It is well known that not every act emanating from an administrative organ can be made the subject of a recourse but only those which are 25 of an executory nature.

What is an executory act is defined in the following extract from the Conclusions from the Case-Law of the Council of State in Greece 1929-1959 at p. 237:-

30 “ ἐκεῖναι δι’ ὧν δηλοῦται βούλησις διοικητικοῦ ὀργάνου, ἀποσκοποῦσα εἰς τὴν παραγωγὴν ἐνόμου ἀποτελέσματος ἐναντι τῶν διοικουμένων καὶ συνεπαγομένη τὴν ἀμεσον ἐκτέλεσιν αὐτῆς διὰ τῆς διοικητικῆς ὁδοῦ. Τὸ κύριον στοιχεῖον τῆς ἐννοίας τῆς ἐκτελεστῆς πράξεως εἶναι ἡ ἀμεσος παραγωγὴ ἐνόμου ἀποτελέσματος, συνηστανμένου εἰς τὴν 35 δημιουργίαν, τροποποιήσιν ἢ κατάλυσιν νομικῆς καταστάσεως, ἥτοι δικαιωμάτων καὶ ὑποχρεώσεων διοικητικοῦ χαρακτήρος παρὰ τοῖς διοικουμένοις”.

(“..... those by which the will of the administrative organ is declared, intending the creation of a legal situation

towards the subjects involving its direct execution by administrative means. The main element of the meaning of executory act is the direct creation of a legal result, consisting of the creation, amendment or abolition of a legal situation, i.e. rights and obligations of an administrative character by the subjects”). 5

Is it that in the present case the Public Service Commission have, by their decision not to terminate the interdiction of the applicant, created or produced a legal situation concerning the applicant and entailing its direct execution by administrative means? 10

What counsel asked, in the present case, was that, because of the acquittal of his client on 10 out of the 26 charges he was facing, his interdiction ought to be terminated. The remaining 16 charges pending then against him were for offences which are considered to be not only of a nature unbecoming for a civil servant, but, also, punishable by the Criminal Code, i.e. insults, assaults, unlawful possession of firearms and offences against public order. 15

These charges formed part of the original complaint of the Director General of the Ministry of Health on which the Public Service Commission based its decision for the interdiction of the applicant. Therefore, the decision of the Commission, after the letter of counsel for the applicant, not to terminate his interdiction, was not based on any new facts before it, and for this reason, such decision can only be held to be a confirmatory and not an executory act and as such it cannot be made the subject of a recourse. If authority is required on this, see *Economides v. The Republic*, (1980) 3 C.L.R. 219, 223, 224 and the Conclusions, *supra*, where (at p. 240) the following are stated in this respect: 20

“Πράξεις βεβαιωτικές. Ἀπαραδέκτως προσβάλλονται δι’ αἰτήσεως ἀκυρώσεως, ὡς στερούμεναι ἐκτελεστοῦ χαρακτήρος, αἱ βεβαιωτικαὶ πράξεις, ἤτοι αἱ πράξεις αἱ ἔχουσαι τὸ αὐτὸ περιεχόμενον πρὸς προεκδοθεῖσαν ἐκτελεστήν, ἐπιβεβαιῶσαι ταύτην, ἀνεξαρτήτως τοῦ ὅν ἐκδίδονται αὐτεπαγγέλτως ἢ τῇ αἰτήσῃ τοῦ ἐνδιαφερομένου. Οὕτω εἶναι βεβαιωτικὴ ἡ πράξις ἢ συνιστῶσα ἀπλήν ἐπανάληψιν προγενεστέρως, ἢ στηριζομένη ἐπὶ τῆς αὐτῆς πραγματικῆς καὶ νομικῆς βάσεως. Πρᾶξις δηλοῦσα ἀπλήν ἐμμονὴν τῆς 35 48

5 Διοικήσεως εις προηγουμένην πράξιν, ἔστω καὶ μὴ ἐπανα-
λαμβάνουσα τὸ περιεχόμενον ταύτης, ἀποτελεῖ ἐπίσης βεβαι-
ωτικὴν πράξιν, ὡς λ.χ. ἡ ἔμμονή εἰς προγενεστέραν ἄρνησιν.
Οὕτω ἐκρίθησαν βεβαιωτικαὶ πράξεις ἢ ἄρνησις τῆς Διοική-
σεως ὅπως ἀνακαλέσῃ προηγουμένην ἐκτελεστὴν πράξιν,
ἢ ἀπόρριψις ἀπλῆς ἱεραρχικῆς προσφυγῆς ἢ αἰτήσεως
θεραπείας”.

10 (“Confirmatory acts. Unacceptably they are attacked
by recourse for annulment, as lacking executory character,
confirmatory acts i.e. acts which have the same contents
with a pre-issued executory one, confirming same, irrespec-
15 tive of whether they are issued on the motion of the admi-
nistration or on the application of the interested party.
Thus confirmatory is an act which consists of a mere repe-
tition of a previous one, based on the same factual and
legal basis. An act stating a mere persistence of the
administration to a previous act, even though it does not
repeat its contents also constitutes a confirmatory act,
20 as for instance the persistence to a previous refusal. Thus
the refusal of the Administration to revoke a previous
executory act, the dismissal of a simple hierarchical recourse
or an application for relief were considered as confirmatory
acts”).

25 In view of my above decision, I am of the opinion that there
is no need to examine any other ground raised in these proceed-
ings and, in the result, this recourse is dismissed with costs,
if claimed.

Application dismissed with costs.

“ΠΑΡΑΡΤΗΜΑ Α

30 Πρακτικὰ τῆς συνεδριάσεως τῆς Ἐπιτροπῆς
Δημοσίας Ὑπηρεσίας ἡμερομηνίας 24.10.79-
9.15 π.μ.

35 Παρόντες: Πρόεδρος: Τ. Φᾶνος.
Μέλη: Α. Ἀναστασίου,
Γ. Λουκά,
Θ. Χρήστου,
Λ. Χριστοδούλου.

Γραμματεὺς: Κ. Χ. Μακρίδης.

1. Αίτησις κ. 'Αργυροῦ Κυριάκου, 'Εσωτερικοῦ Διευθυντοῦ Στέγης 'Αγίου Χαραλάμπους, εἰς τὸ Τμήμα 'Ιατρικῶν Ὑπηρεσιῶν διὰ τὴν ἄρσιν τῆς διαθεσιμότητός του ἐν σχέσει μὲ τὴν πειθαρχικὴν ὑπόθεσιν ἐναντίον του.

'Ο Γενικός Διευθυντής τοῦ Ὑπουργείου Ὑγείας, ἐνεργῶν διὰ τὴν ἀρμοδίαν ἀρχὴν, δι' ἐπιστολῆς του ὑπ' ἀρ. Υ.Υ.407/61/8 καὶ ἡμερομηνίαν 21 Φεβρουαρίου, 1978, ἐπληροφόρησε τὴν Ἐπιτροπὴν Δημοσίας Ὑπηρεσίας ὅτι ἐναντίον τοῦ κ. 'Αργυροῦ Κυριάκου, 'Εσωτερικοῦ Διευθυντοῦ Στέγης 'Αγίου Χαραλάμπους, διετάχθη πειθαρχικὴ ἔρευνα διὰ σωρείαν σοβαρῶν ἀδικημάτων τὰ ὅποια ὑπέβαλον οἱ ἀσθενεῖς καὶ τὸ προσωπικὸν τοῦ Οἴκου 'Αγίου Χαραλάμπους εἰς Λάρνακα'.

Εἰς τὴν ἰδίαν ἐπιστολὴν οὗτος ἀνέφερεν ὅτι 'τὰ ἀδικήματα αὐτὰ ἀναφέρονται εἰς ἐξυβρίσεις, ἐκφοβισμούς, ἐυλοδαρμούς, ἀσέμνους ἐπιθέσεις κατὰ τῶν ἐργατριῶν, ἐξύβρισιν τοῦ ἐκλιπόντος Προέδρου τῆς Δημοκρατίας Ἀρχιεπισκόπου Μακαρίου καὶ ἄλλα' καὶ εἰσηγήθη ὅπως, χάριν τοῦ δημοσίου συμφέροντος, ἡ Ἐπιτροπὴ θέσῃ τοῦτον εἰς διαθεσιμότητα μέχρι τῆς τελικῆς συμπληρώσεως τῆς ὑποθέσεως, δυνάμει τοῦ ἀρθρου 84 τοῦ περὶ Δημοσίας Ὑπηρεσίας Νόμου Ἀρ. 33/67.

'Ἡ Ἐπιτροπὴ Δημοσίας Ὑπηρεσίας ἐπελήφθη τοῦ ἐν λόγῳ θέματος κατὰ τὴν συνεδρίαν τῆς 22ας Φεβρουαρίου, 1978, καὶ ἀπεφάσισεν ὅπως ὁ κ. Κυριάκου τεθῆ εἰς διαθεσιμότητα, χάριν τοῦ δημοσίου συμφέροντος, ἀπὸ τῆς 23ης Φεβρουαρίου, 1978 καὶ μέχρι τῆς τελικῆς συμπληρώσεως τῆς ὑποθέσεως. Εἰς τὸν κ. Κυριάκου ἐπετράπει ὅπως λαμβάνῃ τὸ ἥμισυ τῶν ἀπολαβῶν τῆς θέσεώς του διαρκούσης τῆς διαθεσιμότητός του.

'Ἡ ρηθεῖσα-ἀπόφασις τῆς Ἐπιτροπῆς ἐκοινοποιήθη πρὸς τὸν ἐν λόγῳ ὑπάλληλον δι' ἐπιστολῆς τοῦ Προέδρου αὐτῆς ὑπ' ἀρ. Π. 9146 καὶ ἡμερομηνίαν 22αν Φεβρουαρίου, 1978.

Τὴν 27.4.1979 ἡ ἀρμοδία ἀρχὴ διεβίβασε πρὸς τὴν Ἐπιτροπὴν διὰ τὰ περαιτέρω τὸ ὑπὸ τοῦ Γενικοῦ Εἰσαγγελέως διατυπωθὲν κατηγορητήριον ἐναντίον τοῦ κ. Κυριάκου, εἰς τὸ ὅποιον περιελήφθησαν πειθαρχικὰ ἀδικήματα σχετιζόμενα ἀμέσως μὲ τὸ πρᾶξι-κόπημα καθὼς καὶ μεταγενέστερα τοιαῦτα.

'Ἡ ἀκρόασις τῆς ἐναντίον τοῦ κ. Κυριάκου πειθαρχικῆς ὑποθέσεως ἤρξατο τὴν 18.9.1978 βράσει τοῦ διατυπωθέντος κατηγορητηρίου, κατὰ τὴν διάρκειαν δὲ αὐτῆς καὶ συγκεκριμένως τὴν 24.9.1979

ὁ Δικηγόρος τῆς Κατηγορούσης Ἀρχῆς ἐζήτησε νὰ τοῦ ἐπιτραπῆ νὰ ἀποσύρῃ τὰς Κατηγορίας 17-26. Ἡ Ἐπιτροπὴ ἐπέτρεψε τοῦτο καὶ κατὰ συνέπειαν ἠθώωσε τὸν κατηγορούμενον εἰς τὰς κατηγορίας αὐτάς.

- 5 Ὁ Δικηγόρος κ. Κ. Κληρίδης, ἐνεργῶν ἐκ μέρους τοῦ κ. Κυριάκου, δι' ἐπιστολῆς του πρὸς τὴν Ἐπιτροπὴν ἡμερομηνίας 5.10.1979 ἰσχυρίσθη ὅτι ὁ πελάτης του ἐτέθη εἰς διαθεσιμότητα λόγω ἀποδιδομένης εἰς αὐτὸν διαπράξεως ὠρισμένων πειθαρχικῶν παραπτωμάτων καθαρῶς ὑπηρεσιακῆς φύσεως, τὰ ὅποια κατόπιν
10 ἐρεύνης συμπεριελήφθησαν εἰς τὸ κατηγορητήριον ὡς Κατηγορίαι 17-26.

- Περαιτέρω εἰς τὴν ἐπιστολὴν τοῦ ὁ κ. Κληρίδης ὑπεστήριξε ὅτι, ὑπὸ τὸ φῶς τῆς ἀποσύρσεως τῶν ἐν λόγῳ κατηγοριῶν ὑπὸ τῆς Κατηγορούσης Ἀρχῆς καὶ τῆς ἀθώωσεως τοῦ κ. Κυριάκου
15 εἰς αὐτάς, οἱ λόγοι διὰ τοὺς ὁποίους οὗτος εἶχε τεθῆ εἰς διαθεσιμότητα ὑπὸ τῆς Ἐπιτροπῆς ἔχουν ἀρθῆ καὶ ἐζήτησεν ὅπως ἡ διαθεσιμότης τοῦ κ. Κυριάκου τερματισθῆ καὶ ἐπιτραπῆ εἰς αὐτὸν νὰ λάβῃ τὸ πλήρες ποσὸν τῶν ἀπολαβῶν, τὰς ὁποίας θὰ ἐλάμβαιεν ἐάν δὲν ἐτίθετο εἰς διαθεσιμότητα.

- 20 Τὸ θέμα ἐτέθη ἐνώπιον τοῦ Γενικοῦ Εἰσαγγελέως, ὅστις ἐγνωμάτευσε ὅτι τὰ γεγονότα τῆς ὑποθέσεως δὲν δικαιολογοῦν τὴν ἄρσιν τοῦ μέτρου τῆς διαθεσιμότητος ἐναντίον τοῦ κ. Ἀργυροῦ Κυριάκου, διὰ τοῦ λόγους τοὺς ὁποίους ἀναφέρει εἰς τὰς ἐπιστολάς του ὑπ' ἀρ. Γ.Ε. 115/1976/6 καὶ ἡμερομ. 22ας καὶ 23ης Ὀκτωβρίου,
25 1979.

Ἡ Ἐπιτροπὴ Δημοσίας Ὑπηρεσίας, ἀφοῦ ἔλαβε σοβαρῶς ὑπ' ὄψιν τὰς παραστάσεις τοῦ Δικηγόρου τοῦ κ. Κυριάκου, καθὼς καὶ τὴν γνωμάτευσιν τοῦ Γενικοῦ Εἰσαγγελέως τῆς Δημοκρατίας, ἔκρινεν ὅτι:

- 30 (α) Τὰ ἀποδοθέντα εἰς τὸν κ. Ἀργυρὸν Κυριάκου ἀδικήματα, διὰ τὰ ὅποια εἶχε διαταχθῆ πειθαρχικὴ ἐρευνα ἐναντίον του καὶ βάσει τῆς ὁποίας ἡ Ἐπιτροπὴ ἔθεσε τοῦτον εἰς διαθεσιμότητα, καλύπτουν πλὴν ἐκείνων διὰ τὰ ὅποια ἠθώωθη διαρκούσης τῆς ἐναντίον του πειθαρχικῆς
35 ὑποθέσεως καὶ ἄλλα, μεταξύ τῶν ὁποίων περιλαμβάνονται καὶ αἱ ἀποδιδόμεναι εἰς αὐτὸν δραστηριότητες, αἵτινες σχετίζονται μὲ τὸ πραξικόμημα καὶ αἱ ὁποῖαι ἀποτελοῦν ἀντικείμενον κατηγοριῶν ἐπὶ τῶν ὁποίων ἡ πειθαρχικὴ ὑπόθεσις δὲν ἔχει εἰσέτι συμπληρωθῆ.

(β) οί λόγοι και τὰ περιστατικά ἐπὶ τῶν ὁποίων ἐβασίσθη ἢ διαθεσιμότης τοῦ κ. Κυριάκου δὲν ἔχουν ὑποστῆ τοιαύτην διαφοροποίησιν ὥστε νὰ δικαιολογῆται ἡ ἄρσις τοῦ μέτρου τῆς διαθεσιμότητος πρὸ τῆς τελικῆς συμπληρώσεως τῆς πειθαρχικῆς ὑποθέσεως.

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Ἐν προκειμένῳ ἡ Ἐπιτροπὴ ἐπανεξήτασε μετὰ προσοχῆς τοὺς λόγους διὰ τοὺς ὁποίους ὁ ἐν λόγω ὑπάλληλος ἐτέθη εἰς διαθεσιμότητα και κατέληξεν εἰς τὸ συμπέρασμα ὅτι τὸ μέτρον τοῦτο ἐλήφθη τόσο πρὸς τὸν σκοπὸν παρεμποδίσσεως ἐπηρεασμοῦ τῶν μαρτύρων κατηγορίας ὅσον και δι' ἄλλους ἔξ ἴσου σοβαροὺς λόγους. Οἱ τοιοῦτοι λόγοι ἀφοροῦν εἰς τὴν ἐργασίαν και τὰς εὐθύναις τοῦ κ. Κυριάκου ὡς Ἐσωτερικοῦ Διευθυντοῦ τοῦ Ἰδρύματος Ἁγ. Χαράλαμπος. Ἡ ἔξ αὐτοῦ ἱεραρχικὴ ἐξάρτησις τοῦ προσωπικοῦ ἀφ' ἑνὸς και ἡ μετ' αὐτοῦ σχέσις τῶν τροφίμων τοῦ Ἰδρύματος ἀφ' ἑτέρου, εὐλόγως τεκμαίρεται ὅτι ἔχουν δυσμενῶς ἐπηρεασθῆ λόγῳ τῆς σοβαρότητος τῶν ἀδικημάτων διὰ τὰ ὁποῖα οὗτος κατηγορεῖται. Ἡ ὑπὸ τοῦ καθ οὗ ἡ δίωξις ἀσκησις τῶν καθηκόντων του ἐκκρεμούσης τῆς ἐναντίον του πειθαρχικῆς ὑποθέσεως κρίνεται ὅτι θὰ ἀπέβαιεν ἐπιζημία διὰ τὴν ὁμαλήν και ἀπρόσκοπτον λειτουργίαν και ἐξυπηρέτησιν τῶν σκοπῶν τοῦ Ἰδρύματος.

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Ἐχουσα ὑπ' ὄψιν τὰ ἀνωτέρω, ἡ Ἐπιτροπὴ ἀπεφάσισεν ὅπως μὴ τερματίσῃ τὴν διαθεσιμότητα τοῦ κ. Ἀργυροῦ Κυριάκου πρὸ τῆς τελικῆς συμπληρώσεως τῆς ἐναντίον του πειθαρχικῆς ὑποθέσεως".

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ΠΑΡΑΡΤΗΜΑ Β

Ἄρ. Φακ.: Π.9146/III

ΓΡΑΦΕΙΟ ΕΠΙΤΡΟΠΗΣ
ΔΗΜΟΣΙΑΣ ΥΠΗΡΕΣΙΑΣ
ΛΕΥΚΩΣΙΑΣ

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31 Ὀκτωβρίου, 1979.

Κύριε,

Ἐχω ὁδηγίαις νὰ ἀναφερθῶ στὴν ἐπιστολὴ σας με ἡμερ. 5 Ὀκτωβρίου, 1979, με τὴν ὁποία ζητᾶτε τὸν τερματισμὸ τῆς διαθεσιμότητος τοῦ πελάτη σας κ. Ἀργυροῦ Κυριάκου και νὰ σᾶς πληροφορήσω τὰ ἀκόλουθα:

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2. Ἡ Ἐπιτροπὴ Δημοσίας Ὑπηρεσίας ἐπιλήφθηκε τοῦ θέματος

σέ πρόσφατη συνεδρία της και έλαβε σοβαρά υπόψη τις παραστάσεις σας.

3. 'Η 'Επιτροπή έλαβε επίσης υπόψη και καθοδηγήθηκε στην απόφασή της από γνωμάτευση του Γενικοῦ Εισαγγελέα τῆς Δημοκρατίας.

4. Τά άποδοθέντα στον πελάτη σας άδικήματα για τὰ όποία είχε διαταχθεί πειθαρχική έρευνα έναντίον του, βάσει τῆς όποίας ἡ 'Επιτροπή Δημοσίας 'Υπηρεσίας τον έθεσε σέ διαθεσιμότητα, καλύπτουν εκτός από εκείνα για τὰ όποία άθωώθηκε κατά τῆ διάρκεια τῆς άκροάσεως τῆς έναντίον του πειθαρχικῆς υποθέσεως και άλλα μεταξύ τῶν όποίων περιλαμβάνονται και άποδιδόμενες σ' αὐτόν δραστηριότητες που σχετίζονται με τὸ πραξικόπημα και που άποτελοῦν αντικείμενο κατηγοριῶν πάνω στις όποίες ἡ πειθαρχική υπόθεση δέν έχει ακόμη συμπληρωθεί.

5. Οί λόγοι και τὰ περιστατικά πάνω στα όποία βασίστηκε ἡ διαθεσιμότητα του πελάτη σας δέν έχουν υποστεί τέτοια διαφοροποίηση που νά δικαιολογεῖται ἡ άρση του μέτρου διαθεσιμότητας πριν από τὴν τελική συμπλήρωση ολόκληρης τῆς πειθαρχικῆς υποθέσεως έναντίον του.

6. Για τούς πιο πάνω λόγους ἡ 'Επιτροπή άποφάσισε νά μην τερματίσει τῆ διαθεσιμότητα έναντίον του κ. 'Αργυροῦ Κυριακού πριν από τὴν τελική συμπλήρωση τῆς πειθαρχικῆς υποθέσεως.

Με εκτίμηση,
(Υπ.) Κ. ΜΑΡΚΙΔΗΣ
Για Πρόεδρο

'Επιτροπῆς Δημοσίας 'Υπηρεσίας.

Κύριο
Κ. Κληρίδη,
Δικηγόρο,
'Ακίνητα Σιαντεκλαίρ,
'Οδός Σοφούλη 'Αρ. 28,
Λευκωσία.

Κοιν.: Γεν. Διευθ. 'Υπ. 'Υγείας,
Διευθ. Τμ. 'Ιατρ. 'Υπηρεσιῶν,
Κο 'Αργυροῦ Κυριακού,
'Εσωτερικό Διευθυντή
Στέγης 'Αγ. Χαραλάμπους,
(Μέσω Δ.Τ.Ι.Υ.)"

("Appendix A

Minutes of the meeting of the Public
Service Commission dated 24.10.79-
9.15 a.m.

- Present: Chairman: T. Phanos 5
- Members: A. Anastassiou
Y. Louca
Th. Christou
L. Christodoulou
- Secretary: K. Ch. Makrides 10
1. *Application by Mr. Arghyros Kyriacou, Internal Director of St. Charalambos Home in the Medical Department, for the termination of his interdiction regarding a disciplinary case against him.*
- The Director-General of the Ministry of Health, acting for the appropriate authority, by his letter No. M.H. 407/61/8 dated 21st February, 1978, informed the Public Service Commission that a disciplinary investigation has been ordered against Mr. Arghyros Kyriacou, Internal Director of St. Charalambos Home, for a number of serious disciplinary offences which have been submitted by the patients and the personnel of St. Charalambos Home at Larnaca. 15 20
- In the same letter he mentioned that 'these offences refer to insults, intimidations, beatings, indecent assaults against female workers, insulting the late President of the Republic Archbishop Makarios and so on' and submitted that, in the public interest, the Commission may interdict him until the final completion of the case, according to section 84 of the Public Service Law No. 33/67. 25
- The Public Service Commission considered the above matter at its meeting of 22nd February, 1978, and decided that Mr. Kyriacou be interdicted, in the public interest, from the 23rd February, 1978 until the final determination of the case. Mr. Kyriacou was allowed to receive half of the emoluments of his post during his interdiction. 30 35

The said decision of the Commission was communicated to the said officer by a letter of its Chairman No. P. 9146 and dated 22nd February, 1978.

5 On the 27th April, 1979, the appropriate authority transmitted to the Commission for further action the charges formulated by the Attorney-General of the Republic against Mr. Kyriacou, which included disciplinary offences which related directly with the coup d'etat and subsequent offences.

10 The hearing of the disciplinary case against Mr. Kyriacou started on 18.9.1979 on the basis of the formulated charges, and in the course of the hearing and precisely on 24.9.1979 Counsel of the prosecuting authority asked for leave to withdraw counts 17-26. The Commission allowed the withdrawal and consequently acquitted the accused on these counts.

15 Advocate Mr. C. Clerides, acting on behalf of Mr. Kyriacou, by a letter to the Commission dated 5.10.1979 alleged that his client has been interdicted due to the alleged commission by him of certain disciplinary offences of a purely official character, which after investigation were included in the charge as counts
20 17-26.

Mr. Clerides by his letter further contended that in the light of the withdrawal of the said counts by the prosecuting authority and the acquittal of Mr. Kyriacou, the reasons for which
25 Mr. Kyriacou has been interdicted by the Commission have been removed and has asked that the interdiction of Mr. Kyriacou be terminated and that he be allowed to receive the full amount of his emoluments, which he would have received had he not been interdicted.

30 The matter was placed before the Attorney-General of the Republic who has advised that the facts of the case do not justify the termination of the interdiction of Mr. Arghyros Kyriacou for reasons which he referred to in his letters under No. A.G. 115/1976/6 dated 22nd and 23rd October, 1979.

35 The Public Service Commission having taken seriously the representations of Mr. Kyriacou's advocate as well as the opinion of the Attorney-General of the Republic, decided that:

- (a) The offences attributed to Mr. Arghyros Kyriacou, for which a disciplinary investigation was ordered

and on which the Commission has interdicted him cover, besides those for which he was acquitted during the hearing of the disciplinary case against him, other offences among which are included those activities attributed to him which are connected with the coup d' etat and which are the subject of counts on which the disciplinary case has not as yet been completed. 5

- (b) The reasons and circumstances on which the interdiction of Mr. Kyriacou has been based have not undergone such a change as to justify the removal of the measure of interdiction before the final determination of the case. 10

In this respect the Commission has re-examined carefully the reasons for which the said officer has been interdicted and has reached the conclusion that this measure has been taken both for the purpose of avoiding his tampering with prosecution witnesses and for other equally serious reasons. These reasons concern the work and the responsibilities of Mr. Kyriacou as Internal Director of the St. Charalambos Home. The hierarchical dependency to him of the personnel on the one hand and the relationship of the inmates of the Home on the other hand can reasonably be presumed to have been prejudicially affected due to the gravity of the offences for which he is charged. The exercise by the respondent of his duties while the disciplinary case against him is pending is considered that it would be injurious to the smooth and unhindered functioning and the service of the purposes of the Home. 15
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Having in mind all the above, the Commission decided not to terminate the interdiction of Mr. Argyros Kyriacou before the final determination of the disciplinary case against him").

No. P. 9146/111

("Appendix B

THE OFFICE OF THE
PUBLIC SERVICE COMMISSION
NICOSIA

31 October, 1979

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Sir,

I am directed to refer to your letter dated 5 October, 1979, whereby you ask for the termination of the interdiction of your client Mr. Arghyros Kyriacou and to inform you the following:

2. *The Public Service Commission considered the matter at a recent meeting and took seriously into consideration your representations.*

3. *The Commission took also into consideration and was guided in reaching its decision by the opinion of the Attorney-General of the Republic.*

4. *The attributed to your client offences for which a disciplinary investigation had been ordered against him, on the basis of which the Public Service Commission interdicted him, cover besides those for which he was acquitted during the hearing of the disciplinary case against him and others among which are included activities attributed to him which relate to the coup d' etat and which are the subject of counts on which the disciplinary case has not as yet been completed.*

5. *The reasons and circumstances on which the interdiction of your client has been based have not undergone such a change as to justify the removal of the measure of interdiction before the final determination of the whole disciplinary case against him.*

6. *For the above reasons the Commission decided not to terminate the interdiction of Mr. Argyros Kyriacou before the final determination of the disciplinary case.*

With respect
(Sgd) K. Makrides
for Chairman
Public Service Commission

Mr. C. Clerides
Advocate
Nicosia)".