

1982 April 12

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS PRODROMOU,

Applicant,

v.

THE EDUCATIONAL SERVICE COMMISSION,

Respondent.

(Case No. 161/82).

5 *Administrative Law—Administrative acts or decisions—Executory act—Decision given in the course of disciplinary proceedings—Whether executory—Court not inclined—as at present advised—to depart from its relevant reasoning in Papanicolaou (No. 1) v. Republic (1968) 3 C.L.R. 225, 232.*

10 *Provisional order—Recourse against decision given in the course of disciplinary proceedings against educational officer—Application for provisional order suspending further conduct of the proceedings—Applicant will suffer no moral or material irreparable harm if proceedings are allowed to continue—Because he can have a remedy by way of a recourse if above decision brings about an adverse for him outcome of the disciplinary proceedings—A public*
15 *functionary cannot regard as irreparable harm the possibility of a disciplinary conviction—It is in the public interest that disciplinary proceedings should be concluded as quickly as possible—And in case of conflict between the public interest and the private interest of the applicant the public interest should prevail.*

20 The applicant, an educationalist who was facing disciplinary proceedings which were currently in progress before the respondent Commission, by means of this recourse challenged a decision given by the Commission on the 11th March, 1982; and applied for a provisional order suspending, in effect, the further progress of the said disciplinary proceedings till the determination of the recourse.

Held, (1) that though it is not necessary to decide finally, at this stage of the present proceedings, whether the aforementioned decision of 11th March 1982 is executory in whole or in part, it can, at least, be said that this is not one of those cases where this Court could go so far as to hold now that it is patently obvious that the said decision is not of an executory nature and that, therefore, it could not be challenged by the present recourse; that for the purposes of this decision on the application for a provisional order it suffices to assume that the decision of 11th March 1982 is of an executory nature; and this Court is assuming this in order to take, at this stage of the present case, the most favourable for the applicant view in this respect (Court not inclined to depart from its relevant reasoning in *Papanicolaou (No. 1) v. Republic* (1968) 3 C.L.R. 225, 232).

(2) That this Court has not been satisfied that if no provisional order is made and if the disciplinary proceedings against the applicant are allowed to continue he will suffer irreparable harm of moral or material nature; that if the aforesaid decision of 11th March 1982, brings about, to any extent, an adverse for the applicant outcome of the disciplinary proceedings, the applicant will have a remedy by way of a recourse against such outcome and he can, also, challenge by means of such recourse any material part of the composite administrative action leading up to the final determination of the matter by the respondent Commission, including, of course, its decision of 11th March 1982; that a public functionary, such as the applicant, cannot regard as irreparable harm the possibility of a decision finding him guilty of a disciplinary offence, because if he is dissatisfied with such a decision he has at his disposal a remedy against it by means of a recourse; that, on the other hand, it is required by paramount considerations of public interest that disciplinary proceedings against public officials should be concluded as quickly as possible in the circumstances of each particular case, in order to ensure the proper and smooth functioning of the administration; that, so, grave harm would be caused to the public interest if this Court interferes by means of a provisional order with the due course of the disciplinary proceedings in question; and, that in any event, in case of a conflict between the public interest, as above, and the private interest of the

applicant the public interest should prevail; accordingly the application must fail.

Application dismissed.

Cases referred to:

- 5 *Frangos v. The Republic* (1982) 3 C.L.R. 53;
Papanicolaou (No.1) v. The Republic (1968) 3 C.L.R. 225 at p. 232;
Fellas v. The Republic (1972) 3 C.L.R. 310 at p. 317;
Gavriel v. The Republic (1971) 3 C.L.R. 185 at p. 202;
- 10 *Ioannou v. The Electricity Authority of Cyprus* (1981) 3 C.L.R. 280 at pp. 299-302;
Koupepa v. The Municipal Committee of the Municipal Corporation of Limassol (1968) 3 C.L.R. 496 at p. 500;
Markou v. The Republic (1968) 3 C.L.R. 267 at p. 276;
- 15 *Yerasimou v. The Republic* (1978) 3 C.L.R. 36 at p. 40;
Papacleovoulou v. The Republic (1979) 3 C.L.R. 223 at p. 226;
Artemides v. Republic (1979) 3 C.L.R. 33 at p. 35;
Xenophontos v. Republic (1979) 3 C.L.R. 546 at p. 548;
Procopiou v. Republic (1979) 3 C.L.R. 686 at pp. 690-692;
- 20 *Markitsis v. The Attorney-General* (1980) 3 C.L.R. 369 at p. 376;
Michaelides v. The Republic (1980) 3 C.L.R. 430 at pp. 434, 435.

Application for a provisional order.

25 Application for a provisional order suspending the further progress of disciplinary proceedings against the applicant before the Educational Service Commission till the determination of this recourse.

A. S. Angelides, for the applicant.

R. Vrahimi-Karyda (Mrs.), for the respondent.

Cur. adv. vult.

30 TRIANTAFYLIDES P. read the following decision. In this case the applicant, who is facing disciplinary proceedings which are currently in progress before the respondent Educational Service Commission, has filed the present recourse on 31st March 1982 challenging a decision given by the Commission,
 35 in the course of such proceedings, on 11th March 1982.

Also, on 31st March 1982 he applied for a provisional order

suspending, in effect, the further progress of the said disciplinary proceedings till the determination of this recourse.

Lengthy arguments have been advanced by both sides as regards the issue of whether or not the said decision of 11th March 1982 is, in whole or in part, an executory decision forming part of a composite administrative action, such as is in the present instance the whole disciplinary process in question. 5

I have been referred, in this respect, inter alia, to a quite recent judgment by Pikis J. which was delivered on 12th January 1982 in *Frangos v. The Republic* (case 457/81, not reported yet).* 10

In that judgment Pikis J. appears to disagree with my judgment in *Papanicolaou (No. 1) v. The Republic*, (1968) 3 C.L.R. 225, 232, regarding the executory nature of a certain stage of disciplinary proceedings, which formed part of the composite administrative action constituted by the disciplinary process as a whole. 15

Having considered very carefully the aforementioned judgment in the *Frangos* case, supra, I do not feel - as at present advised - inclined to depart from my relevant reasoning in the *Papanicolaou* (No. 1), supra. 20

In any event, in the *Frangos* case, supra, Pikis J. was not dealing with a stage in a disciplinary process which was the same as that which was involved in the *Papanicolaou* (No.1) case, supra, and, consequently, the *Frangos* case could, probably, have been determined in the manner in which Pikis J. has decided it and could still be distinguished from the *Papanicolaou* (No.1) case. 25

It is pertinent to point out that the *Papanicolaou* (No.1) case has been relied on by Hadjianastassiou J. in *Fellas v. The Republic*, (1972) 3 C.L.R. 310, 317, and by A. Loizou J. in, inter alia, the cases of *Gavriel v. The Republic*, (1971) 3 C.L.R. 185, 202 and *Ioannou v. The Electricity Authority of Cyprus*, (1981) 3 C.L.R. 280, 299-302. Furthermore, I have applied, myself, the *Papanicolaou* (No.1) case in *Koupepa v. The Municipal Committee of the Municipal Corporation of Limassol*, (1968) 3 C.L.R. 496, 500 and *Markou v. The Republic*, (1968) 3 C.L.R. 267, 276. 35

Though I do not think that it is necessary to decide finally, at

* Now reported in (1982) 3 C.L.R. 53.

this stage of the present proceedings, whether the aforementioned decision of 11th March 1982 is executory in whole or in part, I can, at least, say that this is not one of those cases where I could go so far as to hold now that it is patently obvious that
5 the said decision is not of an executory nature and that, therefore, it could not be challenged by the present recourse.

For the purposes of this decision of mine on the application for a provisional order which is now before me it suffices to assume that the decision of 11th March 1982 is of an executory
10 nature; and I am assuming this in order to take, at this stage of the present case, the most favourable for the applicant view in this respect.

What I have really to decide is whether, even on the basis of the above assumption, this is a proper case in which to grant a
15 provisional order suspending the further conduct of the disciplinary proceedings before the respondent Educational Service Commission, which were to be resumed on 3rd April 1982, and which were adjourned until today by the respondent Commission so as to afford time to this Court to deal with the present application for a provisional order. I appreciate very
20 much the course which was taken in this connection by the Commission because I consider that it exemplifies in an exemplary manner the way in which an administrative organ should, without even being bound to do so by an order of the Court, deal with a situation such as the one which the respondent
25 Commission had to face due to the making in this case of an application for a provisional order.

In deciding whether or not to grant the provisional order applied for by the applicant I have borne in mind the relevant
30 principles which have been expounded by the Supreme Court in a number of recent cases, such as, inter alia, *Yerasimou v. The Republic*, (1978) 3 C.L.R. 36, 40, *Artemides v. The Republic*, (1979) 3 C.L.R. 33, 35, *Papacleovoulou v. The Republic*, (1979) 3 C.L.R. 223, 226, *Xenophontos v. The Republic*, (1979) 3 C.L.R.
35 546, 548, *Procopiou v. The Republic*, (1979) 3 C.L.R. 686, 690-692, *Markitsis v. The Attorney-General*, (1980) 3 C.L.R. 369, 376 and *Michaelides v. The Republic*, (1980) 3 C.L.R. 430, 434, 435.

I have considered all that has been submitted by counsel on

both sides and I have, also, studied carefully the contents of the
aforementioned decision of the 11th March 1982, in order to
examine its consequences from the point of view, in particular, of
any irreparable harm which may be caused to the applicant if
the provisional order sought by him is refused. 5

I have not been satisfied that if no provisional order is made
and if the disciplinary proceedings against the applicant are
allowed to continue he will suffer irreparable harm of moral or
material nature. If the aforesaid decision of 11th March 1982,
brings about, to any extent, an adverse for the applicant outcome 10
of the disciplinary proceedings, the applicant will have a remedy
by way of a recourse against such outcome and he can, also,
challenge by means of such recourse any material part of the
composite administrative action leading up to the final determi-
nation of the matter by the respondent Commission, including, 15
of course, its decision of 11th March 1982.

A public functionary, such as the applicant, cannot regard as
irreparable harm the possibility of a decision finding him guilty
of a disciplinary offence, because if he is dissatisfied with such a 20
decision he has at his disposal a remedy against it by means of a
recourse. On the other hand, it is required by paramount
considerations of public interest that disciplinary proceedings
against public officials should be concluded as quickly as possi-
ble in the circumstances of each particular case, in order to 25
ensure the proper and smooth functioning of the administration;
so, grave harm would be caused to the public interest if I in-
terfere by means of a provisional order with the due course of
the disciplinary proceedings in question; and, in any event, in
case of a conflict between the public interest, as above, and the
private interest of the applicant the public interest should prevail. 30

For all the foregoing reasons I cannot grant the provisional
order applied for by the applicant; but, I am not going to
make any order against him as to the costs of this application.

Application refused with no order as to costs.