1982 March 11

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANOS ADAMIDES,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Case No.* 247/81).

Administrative Law—Administrative acts or decisions—Reasoning—Need for due reasoning—Decision of Council of Ministers terminating Public Officer's duties in the public interest, in exercise of powers under sections 6(f) and 7 of the Pensions Law, Cap. 311—Reasons mentioned therein not such as to enable in the first instance, the person concerned, and the Court on review, to ascertain whether the decision is well founded in fact, and in law—Sub judice decision not properly or sufficiently reasoned—Defective—Annulled—Kazamias *v.* Republic, *reported in this Part at p.* 239 *ante adopted.*

Administrative Law—Administrative acts or decisions—Reasoning—Administrative decision taken in the Public interest—A general averment of public interest does not amount to a sufficient reasoning—But the invocation of public interest must be justified with specification of the serious reasons of public interest which are involved.

Public interest—Administrative decision taken in the public interest—Invocation of public interest must be justified with a specification of the serious reasons of public interest which are involved.

Public Officers—Disciplinary control—A matter within exclusive competence of Public Service Commission—Article 125.1 *of the Constitution—Termination of Public Officer's services, by Council of Ministers, in the public interest, in exercise of powers*

under sections 6(f) and 7 of the Pensions Law, Cap. 311—After finding officer guilty of unbecoming conduct—As such finding amounts to a disciplinary offence under the Public Service Law, 1967 (Law 33/67) it renders the officer subject to the disciplinary powers of the Public Service Commission under section 73(1) of Law 33/67—Council of Ministers by assuming competence in a matter which is within the exclusive competence of the Public Service Commission has acted in excess or abuse of powers—Sub judice decision annulled—Kazamias *v.* Republic, *reported in this Part at p. 239 ante followed.*

Natural Justice—Rules of—Audi alteram partem—Termination of Public Officer's services, by Council of Ministers, in the Public interest, in exercise of powers under sections 6(f) and 7 of the Pensions Law, Cap. 311—After finding him guilty of unbecoming conduct—Predominant purpose of termination of services the imposition on officer of a disciplinary punishment—Assuming Council of Ministers had power to deal with alleged misconduct of officer it ought to inform him of the accusations against him and give him the opportunity to make his defence—Failure to do so amounts to flagrant violation of the above rule of natural justice—Kazamias *v.* Republic, *reported in this Part at p. 239 ante followed.*

The applicant in this recourse challenged the validity of the decision of the Council of Ministers dated 11th June, 1981, whereby his service as Director-General of the Ministry of Education was terminated "in the Public interest". The sub judice decision, which was taken in exercise of the Council's powers under sections 6(f)* and 7* of the Pensions Law, Cap.

* Sections 6(f) and 7 read as follows:

"6(f) No pension, gratuity or other allowance shall be granted under this Law to any officer except on his retirement from the public service in one of the following cases:

.....

(f) in the case of termination of employment in the public interest as provided in this Law.

7. Where an officer's service is terminated by the Council of Ministers on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Council of Ministers may, if he thinks fit grant such pension, gratuity or other allowance as he thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 of this Law".

311 (as amended) was communicated to applicant by letter dated June 11, 1981. The contents of such letter, reproduced verbatim the sub judice decision as appearing in the relevant minutes of the Council of Ministers. It reads as follows:

"I have been instructed by the Council of Ministers to inform you that the Council of Ministers at its today's meeting, in exercising the powers vested in it by sections 6(f) and 7 of the Pensions Law, Cap. 311 (as later amended) and any other power in this respect vested in it and after a thorough examination of the material produced before it in relation to your unbecoming conduct in public which offends basically the very subsistence of the State and the proper and unfettered functioning of the State and its Public Service, having taken into consideration the conditions of such service and your usefulness thereto and generally all the circumstances, came to the conclusion that your stay in the Public Service could, not only serve no useful purpose to it, but also, it would be very detrimental thereto, decided that your service be terminated as from to-day in the public interest, with full retirement benefits, to which you are entitled".

Counsel for the applicant mainly contended:

(a) That the sub judice decision was not properly reasoned within the meaning of Article 29 of the Constitution.

(b) That the sub judice decision was taken under circumstances amounting to abuse of power and in consequence it is null and void and without legal effect, in that reliance on sections 6(f) and 7 of the Pensions Law, Cap. 311 was made for purposes alien to those contemplated therein.

(c) That the sub judice act and/or decision was taken in violation of the fundamental rules of natural justice and in consequence was null and void and of no legal effect, in that no opportunity was given to the applicant to be heard.

(d) That the sub judice act and/or decision violates the fundamental principles of administrative law and the rules of good administration and was therefore null, void and of no legal effect.

By the opposition the respondent maintained that the sub judice decision was lawfully taken in the light of all relevant facts which were the following:

"(1) The Council of Ministers at its meeting of the 11th June, 1981 decided to terminate the services of the applicant as Director-General of the Ministry of Education as from 11.6.1981 in the public interest.

(2) The Council of Ministers at its meeting of the 11th June took into consideration undisputable facts and information emanating from reliable sources, according to which the applicant publicly and in a manner not permitted, presented the Republic *as being without head, and as lacking of good and able government.*

(3) It is understood that the applicant in this way, undermined ("ἐκλόνιζε") the confidence of the public and of the Public Service in the ability and effectiveness of the supreme organs of the State and thus he indirectly undermined the existence of the State.

(4) In the circumstances, it becomes obvious that the usefulness of the applicant in the Public Service, ceased to exist.

(5) The decision of the Council of Ministers for the termination of the services of the applicant which was communicated to him by the letter of the appropriate Minister on the 11.6.1981 was not taken as a disciplinary measure for the punishment of the applicant but as an administrative measure which was necessary in the public interest".

Held, (1) that it is a well established principle of administrative Law that administrative decisions have to be duly reasoned; that due reasoning is essential to enable the Courts to carry out properly their function of judicial control of administrative action; that the whole object of the rule requiring reasons to be given for administrative decisions is to enable in the first instance the persons concerned, and the Court on review, to ascertain in each case whether the decision is well founded in fact and in Law; that a general averment of public interest does not amount to a sufficient reasoning but the invocation of public interest must be justified with a specification (ἔξει-

δίκευσις) of the serious reasons of public interest which are involved; that the sub judice decision is not properly or sufficiently reasoned in that, inter alia, the reasons mentioned therein are not such as to enable in the first instance, the person concerned, and the Court on review, to ascertain whether the decision is well founded in fact and in law; and that, therefore, it is defective and has to be annulled on this ground (*Kazamias* v. *Republic* reported in this Part at p. 239 ante adopted).

(2) That under Article 125.1 of the Constitution the organ expressly entrusted with the duty of "exercising disciplinary control over, including dismissal or removal from office of, public officers" is the Public Service Commission established under Article 124 of the Constitution; that the finding of the Council of Ministers of unbecoming conduct in public undermining the State and its public service on the part of the applicant, is a finding amounting to the breach of the fundamental duties of a public officer under section 58(1)(b)(d) and (e) of the Public Service Law, 1967 (Law 33/67) and rendering him subject to the disciplinary powers of the Public Service Commission for a disciplinary offence under section 73(1); that since disciplinary control over public officers is within the exclusive competence of the Public Service Commission, the Council of Ministers by assuming such competence in the present case, has acted in excess and/or abuse of powers; accordingly, the sub judice decision becomes null and void on this ground as well (*Kazamias* v. *Republic*, reported in this Part at p. 239 ante adopted).

On the assumption that the Council of Ministers had competence to deal with the alleged misconduct of the applicant:

That mere perusal of the contents of the said decision as recorded in the minutes of the Council of Ministers and of the letter communicating the decision to the applicant and with all surrounding circumstances in mind, leaves no room for doubt that the predominant purpose of the sub judice decision was to impose upon the applicant a disciplinary punishment, the most serious one, for alleged public misconduct, without affording him the opportunity of being heard; that even if any doubt might have existed, which in the present case does not exist, this Court would have reached the same conclusion allowing the benefit of doubt to operate in favour of the applicant (see *Marcoullides* v. *The Republic*, 3 R.S.C.C. 30); that, therefore,

the respondent was bound to afford the applicant the right to be informed of the accusations against him and the chance to repudiate same; and that the Council of Ministers by failing to inform the applicant of the accusations against him and give him the opportunity to make his defence, has acted in flagrant violation of the basic rule of natural justice which is summarised in the maxim "audi alteram partem"; accordingly the sub judice decision has to be annulled on this ground as well (*Kazamias* v. *Republic*, reported in this Part at p. 239 ante adopted).

Sub judice decision annulled.

Cases referred to:

Kazamias v. *Republic*, reported in this Part at p. 239 ante;

Re Poyser and Mills' Arbitration [1963] 1 All E.R. 612 at p. 616;

Givaudan & Co. Ltd. v. *The Minister of Housing* [1966] 3 All E.R. 696;

Zavros v. *Council for Registration of Architects and Civil Engineers* (1969) 3 C.L.R. 310 at p. 315;

Decision of the Greek Council of State in Case No. 942/71;

Republic v. *Mozoras* (1966) 3 C.L.R. 356;

Marcoullides v. *Republic*, 3 R.S.C.C. 30;

Kalisperas v. *Republic*, 3 R.S.C.C. 146;

Pantelidou v. *Republic*, 4 R.S.C.C. 100;

Kanda v. *Government of the Federation of Malaya* [1962] A.C. 322.

Recourse.

Recourse against the decision of the respondent whereby the service of the applicant as Director-General of the Ministry of Education was terminated "in the public interest".

L. N. Clerides with *A. Adamides* for the applicant.

S. Georghiades, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The present recourse is directed against the decision of the Council of Ministers dated 11th June, 1981 whereby the service of the applicant as Director-General of the Ministry of Education, was terminated "in the public interest".

The applicant who is 51 years old was till the day of the termi-

nation of his service holding the post of the Director-General of the Ministry of Education, one of the highest posts in the hierarchy of the Civil Service. He was appointed to such post after the transfer of the functions of the Greek Communal Chamber where he was previously employed, to the Ministry of Education and the creation of the Ministry of Education under the provisions of Law 12/65. His first appointment with the Greek Communal Chamber was in August, 1960, as officer in charge of the publications of the Chamber and he was subsequently promoted to the post of Administrative Officer of the Chamber in November of the same year.

Applicant is a graduate of the Law School of the University of Athens, and prior to his appointment in the service of the Greek Communal Chamber he practised as an advocate for a short time.

The applicant during his term of service has shown excellent performance in the discharge of his duties, as it appears from Annex 'B' of the affidavit attached to his application for interim order, where the activities of the applicant are set out and include, amongst others, the facts that

(a) He contributed substantially in the establishment of the Cyprus Sports Organisation, the Cyprus Theatrical Organisation, the Council of Education, the Paedagogic Institute, the Institute for Cyprus Studies and the Centre of Social Research.

(b) He had been the Chairman of a number of ad hoc departmental or ministerial committees, such as the Advisory Committee on Educational Programming and others.

(c) He was the Chairman of the Ministerial Committee appointed for the purpose of studying the feasibility of founding a University in Cyprus.

(d) He participated in the signing of various cultural agreements between Cyprus and other countries.

(e) He represented Cyprus in a number of International conferences of Unesco, the Council of Europe and the Commonwealth, as head of the Cyprus delegation.

In need not expand upon the activities of the applicant that

are mentioned in Annex 'B' which manifest a distinguished career, as the efficiency or integrity of the applicant has not been contested in the present case.

On the 11th June, 1981 the Council of Ministers decided to terminate the service of the applicant in the public interest and communicated such decision to him by letter dated 11th June, 1981, signed by the Minister of Education which was handed over to him by the said Minister. The contents of such letter (copy of which is Annex 'A' to the affidavit for an interim order) reproduce verbatim the decision as appearing in the minutes of the Council of Ministers at the meeting at which such decision was taken.

" Έχω ἐντολὴν παρὰ τοῦ Ὑπουργικοῦ Συμβουλίου ὅπως πληροφορήσω ὑμᾶς ὅτι τὸ Ὑπουργικὸν Συμβούλιον κατὰ τὴν σημερινὴν του Συνεδρίαν, ἀνασκοῦν τὰς ἐξουσίας ὑφ' ὧν περιβέβληται δυνάμει τῶν ἄρθρων 6(στ) καὶ 7 τοῦ περὶ Συντάξεων Νόμου, Κεφ. 311, (ὡς ἐτροποποιήθη μεταγενεστέρως), καὶ πᾶσαν ἄλλην πρὸς τοῦτο χορηγουμένην αὐτῷ ἐξουσίαν καὶ κατόπιν ἐνδελεχοῦς ἐξετάσεως τῶν προσκομισθέντων στοιχείων ἐν σχέσει πρὸς τὴν ἀνεπίτρεπτον δημοσίᾳ συμπεριφορὰν σας, ἡ ὁποία θίγει βασικῶς αὐτὴν ταύτην τὴν κρατικὴν ὑπόστασιν καὶ τὴν κανονικὴν καὶ ἀπρόσκοπτον λειτουργίαν τοῦ κράτους καὶ τῆς Δημοσίας αὐτοῦ Ὑπηρεσίας, λαβὸν ὑπ' ὄψιν τὰς συνθήκας τῆς Ὑπηρεσίας ταύτης καὶ τὴν εἰς αὐτὴν χρησιμότητά σας καὶ ἐν γένει ἁπάσας τὰς περιστάσεις, κατέληξεν εἰς τὸ συμπέρασμα ὅτι ἡ παραμονή σας εἰς τὴν Δημοσίαν Ὑπηρεσίαν ὄχι μόνον οὐδεμίαν ὠφελημότητα θὰ παρεῖχεν εἰς ταύτην, ἀλλὰ καὶ θὰ ἦτο λίαν ἐπιβλαβὴς δι' αὐτὴν καὶ ἀπεφάσισεν ὅπως αἱ ὑπηρεσίαι σας τερματισθῶσιν ἀπὸ σήμερον πρὸς τὸ δημόσιον συμφέρον, μὲ πλήρη τὰ ὠφελήματα ἀφυπηρετήσεως, τῶν ὁποίων δικαιοῦσθε.

(Νίκος Κονομῆς)
Ὑπουργὸς Παιδείας".

The English translation of which reads as follows:-

"I have been instructed by the Council of Ministers to inform you that the Council of Ministers at its today's meeting, in exercising the powers vested in it by sections 6(f) and 7 of the Pensions Law, Cap. 311 (as later amended)

and any other power in this respect vested in it and after a thorough examination of the material produced before it in relation to your unbecoming conduct in public which offends basically the very subsistence of the State and the unfettered functioning of the State and its Public Service, having taken into consideration the conditions of such service and your usefulness thereto and generally all the circumstances, came to the conclusion that your stay in the Public Service could, not only serve no useful purpose to it, but also, it would be very detrimental thereto, decided that your service be terminated as from to-day in the public interest, with full retirement benefits, to which you are entitled".

As a result of such decision, applicant filed the present recourse whereby he prays for—

"(a) A declaration that the act and/or decision of the respondent which was communicated to him by the letter of the Minister of Education dated 11th June, 1981 whereby the respondent decided to terminate the service of the applicant as Director-General of the Ministry of Education, be declared null and void and of no legal effect".

The grounds of law on which this recourse is based, as set out in the application, are the following:-

(1) The sub judice decision is not properly reasoned within the meaning of Article 29 of the Constitution.

(2) The sub judice act and/or decision of the respondent was taken in violation of Articles 46, 57 and 59 of the Constitution, in that—

(a) Ministers and/or Deputy Ministers who could not be in charge of Ministries and/or Deputy Ministries under the Constitution, participated at the meeting.

(b) There was no absolute majority in the taking of the decision.

(c) The said decision was never published in the official Gazette of the Republic.

(3) The said decision was void ab initio and/or illegal, in that—

(a) In so long as in the said decision there are included grounds such as "unbecoming conduct" in public which offends basically the very subsistence of the State and the proper functioning of the State and its public service" the machinery provided by section 73 of the Public Service Law which was enacted by virtue of Article 122 and 125 of the Constitution of Cyprus, should have been adopted, and not sections 6(f) and 7 of Cap. 311.

(b) The decision was taken in violation of sections 86(1) of Law 33/67, as well as Articles 192(1) and (7)(b) of the Constitution and/or the Colonial Regulations which, under the provisions of section 86(1) of Law 33/67 are applicable to the present case.

(c) (i) Sections 6(f) and 7 of Cap. 311 by virtue of which the sub judice act and/or decision was taken are not applicable in the present case, in view of the fact that they ceased to be in force and/or were amended and/or abolished by Articles 12, 18, 19, 33, 122, 125, 179, 182 and 192 of the Constitution.

(ii) In the alternative and without prejudice to the above, it is alleged that in any event sections 6(f) and 7 of Cap. 311 do not legally apply to the facts of the case of the applicant.

(4) The sub judice decision was taken under circumstances amounting to abuse of power and in consequence it is null and void and without legal effect, in that reliance on sections 6(f) and 7 of Cap. 311 was made for purposes alien to those contemplated therein.

(5) The sub judice act and/or decision was taken in violation of the fundamental rules of natural justice and in consequence is null and void and of no legal effect, in that no opportunity was given to the applicant to be heard.

(6) The sub judice act and/or decision violates the fundamental principles of administrative law and the rules of good administration and is therefore null, void and of no legal effect.

(7) In any event and without prejudice to the above, the sub judice decision is null and void in that—

(a) It was based on non-existing and/or misconcepted facts and/or legally misconcepted facts and in consequence is null and void.

(b) The respondent did not have before it a complete, correct and accurate report of the facts of the case of the applicant, particularly, because the applicant's explanation is not contained in the suggestion for the termination of his service and, therefore, the sub judice decision is illegal and/or null and void and of no legal effect.

By its opposition the respondent maintains that the sub judice decision was lawfully taken in the light of all relevant facts which, as set out in the opposition, are the following:-

"(1) The Council of Ministers at its meeting of the 11th June, 1981 decided to terminate the services of the applicant as Director-General of the Ministry of Education as from 11.6.1981 in the public interest.

(2) The Council of Ministers at its meeting of the 11th June took into consideration undisputable facts and information emanating from reliable sources, according to which the applicant publicly and in a manner not permitted, presented the Republic *as being without head, and as lacking of good and able government.*

(3) It is understood that the applicant in this way, undermined ("eklonize") the confidence of the public and of the Public Service in the ability and effectiveness of the supreme organs of the State and thus he indirectly undermined the existence of the State.

(4) In the circumstances, it becomes obvious that the usefulness of the applicant in the Public Service, ceased to exist.

(5) The decision of the Council of Ministers for the termination of the services of the applicant which was communicated to him by the letter of the appropriate Minister

on the 11.6.1981 was not taken as a disciplinary measure for the punishment of the applicant but as an administrative measure which was necessary in the public interest".

As it appears from the minutes of the decision copy of which has been produced as exhibit 1, the said decision refers to the termination of the services not only of the applicant but also of the Director-General of the Ministry of Communications and Works, Mr. Kazamias who filed Recourse No. 234/81 (*Kazamias* v. *The Republic**), contesting the validity of the termination of his service. Most of the legal grounds on which the present recourse is based, have been dealt with by me in that case and appear in the judgment* I have just delivered. Therefore, for the purposes of this case, I shall deal briefly with the legal grounds posing for consideration, as most of my findings in Recourse 234/81 apply to the present case as well, the cause of which, as I have already mentioned, arose from the same decision of the respondent.

It is clear from the contents of the letter sent to the applicant and the minutes of the meeting of the Council of Ministers at which the sub judice decision was taken and from the whole tenor of the arguments before me, that in taking such decision the Council of Ministers relied on sections 6(f) and 7 of the Pensions Law, Cap. 311, as amended by Laws 9/67 to 39/81. Paragraph (f) of section 6 reads as follows:-

"in the case of termination of employment in the public interest as provided in this Law".

And section 7 of Cap. 311, as amended by Laws 9/67 to 39/81 reads today as follows:-

"Where an officer's service is terminated by the Council of Ministers on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Council of Ministers may, if it thinks fit, grant such pension, gratuity or other allowance as it thinks just and proper, not exceeding in amount that for which the officer would be eligible

* Vide p. 239 *ante*.

if he retired from the public service in the circumstances described in paragraph (e) of section 6 of this Law".

Cap. 311 has evolved from the previous Pensions Law, Cap. 288 of Vol. II of the Legislation of Cyprus, 1949, as amended by Laws 4/52 to 28/55.

Cap. 288, prior to its amendment, did not contain any provision as to the payment of pension on termination of employment in the public interest. Such provision was introduced by Law 1/55 which amended sections 6(f) and 7 by the introduction of the words "in the public interest" as it appears in Cap. 311. As to the evolution of Cap. 311 I wish to refer to what I said in this respect in *Kazamias* v. *The Republic* (supra).

"Considering the objects of the Pensions Law as set out in its title, the express power for termination of service of a civil servant in Regulation 59 and the phraseology of section 7 as to the power to grant pension which, in this respect is the same as that of Regulation 59, and comparing the provisions of Regulation 59 to those of section 6(f) and section 7 one can reach the conclusion that the power to terminate the service of a public officer emanated not from sections 6(f) and 7 of the Pensions Law, but from Colonial Regulation 59 and that sections 6(f) and 7 were ancillary provisions enacted to give effect to Regulation 59 under the provision contained in the last sentence of such Regulation".

And further down in the same judgment:-

"After Independence, one has to examine within whose competence matters of retirement of a public officer 'in the public interest' are and wherefrom such competence is derived. In *Papaleontiou* v. *The Republic* (supra)(1) in the special circumstances of that case, it was held that as the question entailed considerations of public interest and Government policy, it was not within the specifically laid down competence of the Public Service Commission under Article 125.1 but within the residual competence of the Council of Ministers under Article 54 of the Constitution.

(1) (1967) 3 C.L.R. 624.

In *Lyssiotou* v. *Papasavva* and another (1968) 3 C.L.R. 173 at pp. 184-185, Josephides, J., had this to say:-

'It should, perhaps, be clarified that we are not here concerned with the compulsory retirement of a public officer following disciplinary proceedings, which would no doubt be within the competence of the Commission; nor are we concerned with the retirement of a public officer 'in the public interest', under the provisions of section 7 of the Pensions Law. Cap. 311, which would appear to fall within the exclusive competence of the Council of Ministers (cf. the cases of the termination of the services of three Court Stenographers referred to in the case of *Papaleontiou and the Republic*, (1967) 3 C.L.R., 624)'.

Though I am inclined to agree with the above opinion in that matters concerning the retirement of a public officer 'in the public interest' other than the compulsory retirement of a public officer following disciplinary proceedings on matters which under Article 125.1 fall within the exclusive competence of the Public Service Commission would appear to fall within the exclusive competence of the Council of Ministers, I disagree that such competence is derived from section 7 of the Pensions Law, Cap. 311 but from the residue of any executive powers vested in the Council of Ministers under Article 54 of the Constitution in respect of any matters concerning the public service which have not been expressly given to the Public Service Commission under Article 125".

In *Kazamias* v. *The Republic* I had to consider at some length the position of public officers prior to the Independence of Cyprus, in view of the fact that the applicant in that case was holding office prior to the Independence Day and by virtue of Article 192.1 of the Constitution the terms and conditions of office of public officers before the coming into operation of the Constitution were preserved and could not be altered to his disadvantage during his continuance in the public service of the Republic on or after that date. The position of the applicant in the present case is different from that of Kazamias, in that the applicant was appointed in the Public Service after the Independence Day and so he had no vested rights accrued at the time of his appointment under Article 192.1 of the Constitution. With that brief introduction, I am coming now to consider

the various grounds of law in the present case and I shall deal first with the legal ground in respect of lack of due reasoning and the arguments in support of such ground.

As I have said in the case of *Kazamias* v. *The Republic* (supra)–

> "It is a well established principle of Administrative Law that administrative decisions have to be duly reasoned. Due reasoning is essential to enable the Courts to carry out properly their function of judicial control of administrative actions. (See *Rallis and The Greek Communal Chamber*, 5 R.S.C.C. 11, *Iacovides* v. *The Republic* (1966) 3 C.L.R. 212 at p. 221, *Zavros* v. *The Council for Registration of Architects and Civil Engineers* (1969) 3 C.L.R. 310 at p. 315, *Kasapis* v. *Council for Registration of Architects and Civil Engineers* (1967) 3 C.L.R. 270 at pp. 275, 276, *Constantinides* v. *The Republic* (1967) 3 C.L.R. 7 at p. 14, *Metaphoriki Eteria* v. *Republic* (1981) 3 C.L.R. 221 at p. 237)".

And then I proceeded in the said judgment to make more extensive reference to a number of other decisions of this Court on this point and also to the English decisions in *Re Poyser and Mills' Arbitration*, [1963] 1 All E.R. 612 at p. 616 *and Givaudan & Co. Ltd.* v. *The Minister of Housing etc.* [1966] 3 All E.R. 696.

I wish, for the purposes of the present case, to reiterate the principles expounded in *Zavros* v. *The Council for Registration of Architects and Civil Engineers* (supra) in which Stavrinides, J. had this to say at p. 315:–

> "It is evident that the whole object of the rule requiring reasons to be given for administrative decisions is to enable in the first instance the persons concerned, and the Court on review, to ascertain in each case whether the decision is well founded in fact and in Law (cp. Porismata Nomologhias, p. 183, first paragraph); and from this three propositions follow:–
>
> (a) the reasons must be stated clearly and unambiguously;
>
> (2) they must be read in the sense in which reasonable persons affected thereby would understand them;
>
> (3) a decision cannot be supported by reasons stated in terms not fulfilling the object of the rule".

I wish also to repeat what I said in *Kazamias* case that—"A general averment of public interest does not amount to a sufficient reasoning but the invocation of public interest must be justified with a specification (ἐξειδίκευσις) of the serious reasons of public interest which are involved". See "Modern Trends of the Principle of Legality in Administrative Law", 1973 Ed., by Tahos at page 146, foot-note 19(a) at page 119 of the same book, the decision of the Greek Council of State in Case No. 942/71 and Dagtoglou "General Administrative Law", 1977 ed. Vol. A at pp. 88 and 89 which are referred to in the *Kazamias case* (supra).

My finding in the case of *Kazamias* v. *The Republic* on the question of reasoning, reads as follows:

> "With the above principles in mind and having regard to the reasoning of the sub judice decision, I agree with the submission of learned counsel for the applicant that such decision is not properly or sufficiently reasoned. Such decision is overshadowed by a cloud of generalities invoking allegations of unbecoming public conduct on the part of the applicant of such nature as to make it necessary in the public interest to impose upon him the ultimate punishment of terminating his permanent appointment with the Government service, without mentioning particulars of such allegations, or the evidence on which the Council of Ministers relied, or any surrounding circumstances and also by failing to specify (ἐξειδικεύση) the matters of public interest involved. The reasons mentioned in the decision are not such as to enable in the first instance, the person concerned, and the Court on review, to ascertain whether the decision is well founded in fact and in law (see *Zavros*' case (supra)).
>
> The Minister's letter to the applicant conveying to him the decision of the Council of Ministers and the decision itself as recorded in the minutes of the Council of Ministers, are so obscure and substantially inadequate and would leave in the mind of an informed reader such real and substantial doubt as to the reasons for such decision and as to the matters which the Council of Ministers did or did not take into account in taking the sub judice decision, that they do not comply with the well established principles of proper reasoning, compliance to which is necessary

under the general and well established principles of administrative law.

In view of the above, I have reached the conclusion that the sub judice decision is defective and in the result has to be annulled".

I entirely adopt the above as applying mutatis mutandis in the present case. In the result, I have reached the conclusion that the sub judice decision is defective and has to be annulled on this ground.

Independently of my above finding and assuming as I did in *Kazamias* case that the Council of Ministers had competence in the matter, I am coming now to consider whether it was within such competence of the Council of Ministers to terminate the applicant's service in the Government in violation of the rules of natural justice.

The rules of natural justice and the effect of their violation, have been expounded at some considerable length in the case of *Kazamias* v. *The Republic* which exposition and the authorities mentioned therein I adopt as applying mutatis mutandis in the present case. Reference was made by me in that case to the recent trends in Greece as explained in "Administration and the Law" by Tsoutsos, 1979 Ed. at pp. 132, 133. At page 134 of the same book we read:

"Κατὰ ταῦτα δυνάμεθα ἐν συμπεράσματι νὰ εἴπωμεν ὅτι κατὰ τὴν νομολογίαν τοῦ ἑλληνικοῦ Συμβουλίου τῆς Ἐπικρατείας ἡ ἀρχὴ τῆς ἑκατέρωθεν ἀκροάσεως ἐπιβάλλεται καὶ ἄνευ ρητῆς διατάξεως εἰς τὰς ἑξῆς περιπτώσεις:

(α) Προκειμένης ἐπιβολῆς πειθαρχικῆς ποινῆς εἰς πρόσωπον εὑρισκόμενον ἐν ὑπηρεσιακῇ ἐξαρτήσει ἐκ τῆς Διοικήσεως.

(β) Ἐπὶ λήψεως διοικητικοῦ μέτρου, ἀπευθυνομένου εἰδικῶς καθ' ὡρισμένου προσώπου ἀσκοῦντος δημόσιον λειτούργημα λόγῳ ἀποδιδομένης εἰς αὐτὸ ὑπαιτιότητος.

(γ) Ἐπὶ ἐπιλύσεως ὑπὸ διοικητικοῦ ὀργάνου ἀμφισβητήσεως, ἐγειρομένης μεταξὺ δύο μερῶν ἢ κατὰ διοικητικῆς πράξεως, ἐξ ἧς ὀφελεῖταί τις".

("Therefore in conclusion we can say that according to the jurisprudence of the Greek Council of State the principle of hearing both sides is obligatory without an express provision in the following instances:

(a) In respect of the imposition of a disciplinary punish-

ment on a person who is officially dependent on the administration.

(b) On the taking of an administrative measure, specially directed at a certain person exercising a public function due to blame attributed to him.

(c) On the resolving, by an administrative organ, of a dispute, which has arisen between two parties or against an administrative act whereby someone has derived some berefit").

One of the leading cases of our Court which is mentioned in the case of *Kazamias* is *The Republic of Cyprus* v. *Antonios Mozoras* (1966) 3 C.L.R. 356 where Josephides, J. expounded the rules of natural justice and made extensive reference to the English and French Administrative Law. At p. 400 of such decision, the following are stated:-

"Throughout the web of our system of administration of justice in Cyprus (if I may borrow the happy phrase of Lord Chancellor Sanky in another context in the *Woolmington* case) one golden thread is always to be seen, that is to say, that a person is entitled to a fair hearing, which means that he must be informed of the accusation made against him and given an opportunity of being heard before judgment is passed on him. These principles are now enshrined in our Constitution, Articles 12.5 and 30 reproducing the provisions of Article 6 of the Rome Convention on Human Rights of 1950. As was very aptly said in *Dr. Bentley's* Case (1723), 1 Stra. 557: 'Even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam' says God, 'where art thou? Hast thou not eaten of the tree that thou shouldst not eat?'".

Having adopted the exposition on the principle of the rules of natural justice as explained in *Kazamias* v. *The Republic*, I am coming now to consider whether such principles are applicable to the present case.

It is abundantly clear from the decision that the reason why the service of the applicant was terminated was because he was found guilty of "unbecoming conduct in public" the effect of which was to undermine and fetter the proper functioning of the State and its public service. The Council of Ministers

reached such conclusion, as it appears from the minutes of the Council, after a thorough examination of the material produced before it relating to such conduct.

A mere perusal of the contents of the said decision as recorded in the minutes of the Council of Ministers and of the letter communicating the decision to the applicant and with all surrounding circumstances in mind, leaves no room for doubt that the predominant purpose of the sub judice decision was to impose upon the applicant a disciplinary punishment, the most serious one, for alleged public misconduct, without affording him the opportunity of being heard. Even if any doubt might have existed, which in the present case does not exist, I would have reached the same conclusion allowing the benefit of doubt to operate in favour of the applicant (*Marcoullides and The Republic*, 3 R.S.C.C. 30, *Kalisperas and The Republic*, 3 R.S.C.C. 146, *Pantelidou and The Republic*, 4 R.S.C.C. 100. Matters of inefficiency or inability to perform his duties are not alleged against the applicant; on the contrary, it was admitted that till the termination of his service, he was both a competent and able public officer.

Having found as above, the respondent was bound to afford the applicant the right to be informed of the accusations against him and the chance to repudiate same.

In the result, I have reached the conclusion that the Council of Ministers by failing to inform the applicant of the accusations against him and give him the opportunity to make his defence, had acted in flagrant violation of the basic rule of natural justice which is summarised in the maxim "audi alteram partem".

For all the above reasons, the sub judice decision has to be annulled on this ground as well.

Independently of my finding that the decision of the respondent amounts to a disciplinary sanction and the rules of natural justice had to be complied with I wish to add what I said in *Kazamias* case that even in cases where a decision is not of a disciplinary nature but is an administrative measure, as suggested by counsel for the respondent,

> "....it is well settled that when an administrative decision assumes the character of a sanction and has sufficiently adverse effect on the position of an individual, as in the circumstances of the present case, the courts

require that the person affected should be given the opportunity of questioning the reason for the adverse decision. This principle has been laid down in the decision of the French Council of State in the case of *Dame Veuve Trompier—Gravier* to which reference is made in *The Republic of Cyprus* v. *Mozoras* (supra) and which was adopted by this Court in *Mikis HadjiPetris* v. *Republic* (1968) 3 C.L.R. 702 at p. 706. See also *Psaltis* v. *Republic* (1971) 3 C.L.R. 372 at p. 373, as to the right of a person interested in a matter pending before the administration for decision involving a sanction to be personally heard by it before the decision is taken".

See also Tsoutsos "Administration and the Law" (supra) at pp. 132, 133, 134.

Having found as above, I need not deal with the alleged violation of the second rule of natural justice that one cannot be a judge in his own cause which was advanced by counsel for the applicant in support of his argument that the Council of Ministers could not decide this case, in view of the fact that as the conduct of the applicant was directed against the Government which in the circumstances consists of the President and His Ministers, the respondent could not have taken the sub judice decision because by so doing it was becoming a judge in its own cause.

I have concluded on the violation of the rules of natural justice on the assumption that the Council of Ministers had competence to deal with the alleged misconduct of the applicant. I am coming now to consider whether the Council of Ministers was competent in the circumstances to take such decision concerning the applicant and impose on him the punishment of dismissal from the public service.

I need not repeat the exposition of the law on this point, as I have already done so in the case of *Kazamias* v. *The Republic* and I adopt such exposition. I wish only to repeat the following from the said judgment:-

"Under Article 125.1 of the Constitution the organ expressly entrusted with the duty of 'exercising disciplinary control over, including dismissal or removal from office of, public officers' is the Public Service Commission established under Article 124 of the Constitution. As I have mentioned

earlier in this judgment, in 1967 an organic law was enacted (Law 33/67) to provide amongst other things, for the procedure in disciplinary matters and I have already referred to the procedure under sections 80, 81 and 82 and the functions of the P.S.C. under section 5. The fundamental duties of public officers are set out in section 58(1) and breach of any such duties constitutes an offence which is included in the disciplinary offences set out in section 73(1) in respect of which disciplinary proceedings may be taken against him and in case he is found guilty to render him liable to the sentences set out in section 79(1).

The finding of the Council of Ministers of unbecoming conduct in public undermining the State and its public service on the part of the applicant, is a finding amounting to the breach of the fundamental duties of a public officer under section 58(1)(b)(d) and (e) of Law 33/67 and rendering him subject to the disciplinary powers of the Public Service Commission for a disciplinary offence under section 73(1). Disciplinary control of public officers including dismissal is a matter within the exclusive competence of the Public Service Commission (see *Nedjati* v. *The Republic* (supra), *Marcoullides and The Republic* (1962) 3 R.S.C.C. 30, *Hadji-Savva* v. *The Republic* (supra), *Lyssiotou* v. *The Republic* (supra)).

The respondent in the present case, as it appears from the minutes of the decision, assumed competence under the provisions of section 7 of Cap. 311 on a disciplinary matter which, as I have already found, is within the exclusive competence of the Public Service Commission. There cannot at one and the same time be two authorities with concurrent power to exercise disciplinary control over public officers, the one an independent organ deriving its powers from the Constitution and the other the Government itself relying on legislative provision. The object of the introduction in our Constitution of Article 125.1, as already explained, was to entrust the safeguarding of the efficiency and proper functioning of the public service of the Republic, expressly including the exercise of disciplinary control over public officers, to the Public Service Commission, an independent and impartial organ outside the governmental machinery, and, at the same time, safe-

guarding the protection of the legitimate interests of public officers. If such power was also retained by the Government, the whole object of Article 125.1 would be defeated and the safeguarding afforded to public officers by such Article would have disappeared".

As to the principle that there cannot at one and the same time be two authorities with concurrent power to exercise disciplinary control over public officers, I wish also to refer to *Kanda* v. *Government of the Federation of Malaya* [1962] A.C. 322, to which reference is made in *Kazamias* v. *The Republic*.

In view of my finding that disciplinary control over public officers is within the exclusive competence of the Public Service Commission, the Council of Ministers by assuming such competence in the present case, has acted in excess and/or abuse of powers and in the result, the sub judice decision becomes null and void on this ground as well.

As on the grounds already decided by me this recourse has to be annulled, I find it unnecessary to deal with the other legal grounds which are raised in paragraph 2 of the legal grounds on which the application is based and which were argued before me, that is, as to whether the Council of Ministers was properly constituted when the decision was taken, whether there was an absolute majority in the taking of the decision and what is the effect on the sub judice decision of the fact that the said decision was never published in the official Gazette of the Republic.

For all the above reasons, this recourse succeeds and the sub judice decision of the Council of Ministers is hereby annulled.

Before concluding in this case, I wish to express my appreciation to counsel appearing for both parties, for the able and elaborate way they have argued their respective case and thus rendered valuable assistance to me in reaching my decision.

As regards costs in the circumstances of this case and having taken into consideration the legal questions involved, I make no order for costs.

Sub judice decision annulled. No order as to costs.