1982 April 30

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANTIGONI MITIDOU

Applicant,

v.

1. CYPRUS TELECOMMUNICATIONS AUTHORITY,
2. FIRST INSTANCE DISCIPLINARY BOARD OF CYPRUS TELECOMMUNICATIONS AUTHORITY,

Respondents.

(*Case No.* 429/79).

Administrative Law—Administrative acts or decisions—Composite administrative act—When completed the independent intermediate parts merge into the final act and their executory character is lost and they cannot be challenged individually—Only final act can be challenged by recourse—Disciplinary conviction and punishment of applicant by First Instance Disciplinary Board of the Cyprus Telecommunications Authority—Appeal to the Second Instance Disciplinary Board and dismissal of the appeal —Decision of the first Instance Board has merged in the decision of the Second Instance Board, has lost its executory character and cannot be challenged by this recourse—Though only final act can be challenged by a recourse validity of the intermediate component parts may by examined in deciding validity of final act because the invalidity of part of a composite act renders all acts which fellow, including the final act, null and void.

Natural Justice—Requirements—Accused person should know the nature of the accusation against him and should be given an opportunity to state his case and tribunal should act in good faith—Rule against bias—Application of rules of natural justice before administrative tribunals does not impose an obligation on them to adopt the regular form of judicial procedure—Disciplinary proceedings against officer of Cyprus Telecommunications Authority—General Manager, in exercise of his powers under the Personnel General Regulations, drafting the charge, after considering the material placed before him by the Investigating Officer and coming to the conclusion that there was a prima facie case against

the applicant—Participation of the General Manager in the First Instance Disciplinary Board which heard the disciplinary case and was composed of five members is not contrary to the rules of Natural Justice.

Disciplinary offences—Disciplinary proceedings—Complete record of the evidence intended to be adduced at the disciplinary trial made available to applicant's counsel before the commencement of the hearing—And applicant afforded opportunity by Investigating Officer to exculpate herself—Therefore she was well acquainted with the case and could prepare her defence.

Disciplinary offences—Disciplinary proceedings—Disciplinary tribunal —No requirement for strict compliance with rules of procedure and evidence applicable before a Court of Law—What is expected from such tribunal is to act in good faith, hear the case in a judicial spirit and in accordance with the principles of substantial justice —And where there are specific rules of procedure provided, such rules have to be followed.

Disciplinary offences—Disciplinary conviction—Judicial control— An Administrative Court cannot, as a rule, interfere with the subjective evaluation of the relevant facts as made by the appropriate organ.

Disciplinary offences—Disciplinary conviction—Sentence—May be imposed on a date other than that on which conviction was pronounced.

Practice—Recourse for annulment—Application and opposition— Grounds of law on which they are based—Must be stated precisely and concisely.

The applicant was at the material time an employee of the Cyprus Telecommunications Authority, holding the post of Operator I, and performing the duties of cashier at the Larnaca Sectional Office. As a result of certain accusations against her for irregularities in the discharge of her duties and in view of the seriousness of such accusations, the General Manager of the respondent 1 Authority ("the General Manager") appointed an Investigating Officer under regulation 41(1)(b) of the Personnel General Regulations, to carry out an investigation concerning such accusations. For the purpose of his investigation the Investigating Officer took written statements from employees of the Authority and he, also, interviewed

the applicant on two occasions and took statements from her. After completing his investigation he submitted the file containing all the evidential material he collected to the General Manager who, after considering the material put before him, came to the conclusion that there was a prima facie case against the applicant for the commission of disciplinary offences. Then the General Manager drafted a charge* for such offences and submitted the case to the 1st instance Disciplinary Board of the Authority under regulation 41 of the above Regulations and, at the same time, he informed the applicant by letter dated February 24, 1979 as follows:

> "Having considered the accusations against you I have concluded that there is prima facie case against you; therefore and in compliance with Regulation 41 paragraph 6(a) of the Personnel General Regulations, I have drafted the relative charge which I attach herewith and I have referred your case to a Disciplinary Board of five members".

The First Instance Disciplinary Board which heard the disciplinary case against the applicant was composed of the General Manager, two Managers, one Assistant Manager and one Section Manager. The presentation and the prosecution of the case on behalf of the Authority was conducted by the Personnel Manager and the defence of the applicant was handled by her counsel. Applicant was represented throughout the proceedings by an advocate, who, acting on her behalf, prior to the hearing inspected the file of the case and was supplied with copies of all statements of witnesses which were taken by the Investigating Officer, including the statements of the applicant.

The Fist Instance Disciplinary Board delivered its decision on 2.6.1979 and found applicant guilty of the charges against her. Counsel for the applicant then addressed in mitigation the Board, which adjourned its decision on sentence till 16.6.1979 when it decided to impose upon applicant the sentence of dismissal from the service of respondent 1 Authority. The applicant appealed against such decision, under the Personnel General Regulations, to the 2nd Instance Disciplinary Board which heard the appeal on 8.8.1979 and reserved its decision. It gave its decision on 15.10.1979 and dismissed the appeal both in respect of the conviction and the sentence imposed upon the applicant.

* The charge appears at p. 567 post.

Hence this recourse for a declaration that the decision of the respondents dated 2.6.1979 and 16.6.1979 by which she was found guilty of certain disciplinary offences as well as the decision of 15.10.1979 dismissing her disciplinary appeal were null and void and of no legal effect.

Counsel for the applicants mainly contended:

(a) That once the General Manager was the person who framed the charge against the applicant he formed an opinion about his guilt, as a result of which he was biased during the trial, and his participation in the Disciplinary Board amounted to violation of the rules of natural justice.

(b) That the charge was defective and not in compliance with the Regulations* as a result of which the applicant was embarrassed in her defence in that she was not aware of the facts of the case when defending herself.

(c) That the Disciplinary Board wrongly admitted evidence as to the previous conduct of the applicant; and that this course violated regulation 46(4) which provided that the procedure must "in as far as possible be similar to the hearing of a criminal case tried summarily", in that inadmissible evidence was allowed to be given.

(d) That on the material before it the First Instance Disciplinary Board could not find the applicant guilty of the charges brought against her.

(e) That the mitigating circumstances of the applicant were not taken into consideration in imposing sentence and that the sentence was imposed on a different date from that of the adjudication of the guilt.

(f) That the respondents acted in violation of regulation 45(5)** of the Personnel General Regulations in that the case was sent to the Disciplinary Board first and then communicated to the applicant and as a result, the applicant was not afforded the opportunity of

* The relevant regulation is regulation 45(4) which provides as follows:
"In disciplinary proceedings all real facts constituting the offence charged and any existing elements of guilt should be defined".

** Regulation 45(5) is quoted at p. 609 post.

giving an explanation or making a statement before the case was sent to the Disciplinary Board.

Counsel for the respondent raised the preliminary objection that the recourse in so far as the decision of 2.6.1979 of respondent 2, the First Instance Disciplinary Board was concerned, was out of time as more than 75 days elapsed since the day when such decision was communicated to the applicant and the day when the recourse was filed. On the other hand counsel for the applicant contended that the decision of 2.6.1979 and that of the second Instance Disciplinary Board constituted a composite administrative act and, therefore, each one of them could be made the subject of a recourse.

Held, (I) on the preliminary objection:

That though it is correct that in the case of a composite administrative act, if the component parts have the characteristics of an executory act, they preserve their executory character and each one of them is capable of being challenged by recourse, when the composite administrative act is completed, the independent intermediate parts merge into the final act and their executory character is lost by such changes and cannot be challenged individually; that the decision of the First Instance Disciplinary Board has merged in the decision of the Second Instance Appellate Board and in consequence it has lost its executory character and cannot be challenged by the present recourse; that the only decision that can be challenged is that of the Second Instance Disciplinary Board, which is not out of time.

Held, further, that though the last decision of a composite administrative act is the only one that can be challenged, nevertheless, once the intermediate component parts are a legal prerequisite to the final act, their validity may be examined in deciding the validity of the final act, as the invalidity of a part of a composite administrative act renders all acts which follow, including the final concluded act, null and void; that, therefore, though the decision of the First Instance Board cannot be challenged by the present recourse, the grounds of appeal advanced against the validity of such decision and argued before the Second Instance Disciplinary Board and which were rejected by such Board may be grounds of law in considering the validity of the decision of the Second Instance Disciplinary Board.

Held, (II) on the merits of the recourse:

(1)(a) That the requirements of natural justice are that the accused person should know the nature of the accusation made, that he should be given an opportunity to state his case and that the tribunal should act in good faith; that, also, under the principles of impartiality and fairness the rule against bias has evolved the existence of which may vitiate a judicial or quasi judicial decision; that the application of the rules of natural justice before administrative tribunals does not however impose an obligation on them to adopt the regular form of judicial procedure.

(1)(b) That at no time did the General Manager take any decision as to the guilt of the accused; that the only action he took after considering the evidence put before him, was to draft the charge and send the case for trial, informing the applicant accordingly; that as from the time of the appointment of the Investigating Officer till and including the trial by the First Instance Disciplinary Board, the General Manager was acting in compliance with the provisions of the Personnel General Regulations; that in the present case the General Manager was not sitting as a chairman of the First Instance Disciplinary Board on an appeal from his own decision but was sitting as a member of a collective organ which has in the first instance to hear the case and decide whether the applicant was guilty of the accusations against her; that from such decision an appeal lied to an entirely differently composed collective organ, the Second Instance Disciplinary Board; that the fact that the General Manager acting in compliance with the Personnel General Regulations found from the material put before him by the Investigating Officer that there was a prima facie case against the applicant to send her for trial before the First Instance Disciplinary Board, does not amount to a finding of guilt which had to be arrived at after hearing of evidence both from the prosecution and the applicant and after evaluating properly such evidence as regards credibility and weight; that the prosecution in the present case was conducted by the Personnel Manager and not by the General Manager and that, therefore, there was no irregularity by the participation of the General Manager in the First Instance Disciplinary Board; accordingly contention (a) should fail.

(2) That the charge against the applicant was in compliance with regulation 45(4) in that all material facts alleged were set out in the charge; that the complaint of the applicant that she was not aware of the real facts when defending herself, is unfounded, especially in view of the fact that a complete record of the evidence, intended to be adduced at the trial was made available to her counsel before the commencement of the hearing and, therefore, both from the facts set out in the charge and the facts disclosed in such evidence she would be well acquainted with the case and prepare her defence; that if any fact was sought to be established which was not within her knowledge from the material made available to her, there was nothing to prevent her counsel to apply for an adjournment to consider the defence of the applicant and at no stage of the proceedings there was such application by counsel for applicant; accordingly contention (b) should fail.

(3) That regulation 46(4) should be read together with regulation 46(5)(c) and 46(6); that under regulation 46(5)(c) there is a complete departure from the rules of evidence applicable in criminal proceedings by allowing the admission of evidence which is not admissible in civil or criminal proceedings and under regulation 46(6) the Board is allowed before deliberation to rely not only on the evidence adduced at the hearing, but on any other evidence as well from other lawful source with the only restriction that the accused must be informed of such evidence; that the combined effect of regulations 46(5)(c) and 46(6) is to secure a person charged with the commission of a disciplinary offence to know the charge against him, have a fair trial, to be represented at such trial by counsel of his choice, cross-examine the witnesses testifying against him, be allowed to give evidence and call witnesses in contradiction of the prosecution witnesses and in case the Disciplinary Board intends to take cognisance of any other evidence which was not called at the trial but came to the knowledge of the Board from other lawful sources he should be informed of such evidence; that the decision of the Board should be duly reasoned so that the accused may know how the decision was reached and be in a position to contest the correctness of such decision on appeal; that the fact should not escape the attention that such a Board consists of laymen and a layman at an inquiry of this kind is of course at a great disadvantage compared to a trained advocate

or a properly composed Court of Law; that whereas when a case is tried before a Court of Law, civil or criminal, the rules of procedure and evidence have to be strictly complied with, there is no similar requirement for strict compliance with such rules at a hearing before a tribunal who is not a judge in the proper sense of the word; that what is expected from such tribunal is to act in good faith, hear the case in a judicial spirit and in accordance with the principles of substantial justice; that where there are specific rules of procedure provided, such rules have to be followed; accordingly contention (c) should fail.

(4) That it is well settled that an administrative Court in dealing with a recourse made against a disciplinary conviction cannot, as a rule, interfere with the subjective evaluation of the relevant facts as made by the appropriate organ; that on the basis of the material before this Court the verdict that the applicant was guilty as charged, which was reached unanimously by the members of the respondent (2) Board, was reasonably open to it and cannot, and should not, be interfered with by this Court; that the respondents did not act under a misconception of fact in reaching their verdict and the contention of counsel for applicant that the conviction was not warranted by the evidence, is untenable; accordingly contention (d) should fail.

(5) That in imposing sentence on the applicant the respondent (2) Board took into consideration whatever counsel for the applicant said in mitigation; that the fact that the sentence was imposed on a date other than that on which applicant was found guilty, which, as alleged, vitiates the proceedings, is entirely unfounded; that what happened in this case, is that after applicant was found guilty, counsel addressed the Board in mitigation and the Board reserved its decision on sentence; that there was nothing wrong in following such course and there was no contravention either of the Regulations or the procedure in criminal cases; that even a proper Court of Law trying a criminal case may, on occasions, reserve the imposition of sentence to a future date to have time to reflect on the sentence which is going to impose in the circumstances of a case; accordingly contention (e) should fail.

(6) That the General Manager in informing the applicant by his letter of the 24th February, 1979 that the case had been

referred to the Disciplinary Board, acted in compliance with the provisions of regulation 41(6)(a); that the object of regulation 45(5) is to afford an accused person the opportunity of having available for perusal all the material which was in the file of the disciplinary proceedings before the hearing of the case and thus be able to prepare his defence accordingly; that this Court is unable to agree with counsel for applicant that applicant was not afforded the opportunity of giving an explanation exculpating herself before the file was sent to the Disciplinary Board; that the applicant was interviewed twice by the Investigating Officer before the investigation was completed by him and before the dossier was sent to the General Manager for further action and whatever she said appears in her statements which were included in the dossier of the case; that even if, as alleged, there was not strict compliance with regulation 45(5), in the circumstances of this case, this is considered as not amounting to such a violation of the rules which might have been treated as a breach of a mandatory nature non-compliance with which might have embarrassed in any way the applicant or prejudiced her in her defence; accordingly contention (f) should also fail.

Application dismissed.

Observations with regard to the proper presentation of the grounds of Law in the application and the opposition.

Cases referred to:

Pelides v. *The Republic*, 3 R.S.C.C. 13 at pp. 17, 18;

Orphanides v. *The Republic* (1968) 3 C.L.R. 385 at p. 392;

Nemitsas Industries Ltd. v. *The Municipal Corporation of Limassol and Another* (1967) 3 C.L.R. 134;

HjiGeorghiou v. *The Republic* (1974) 3 C.L.R. 436 at p. 445;

Angelidou and Others v. *The Republic* (1975) 3 C.L.R. 404;

Christodoulou and Another v. *CYTA* (1978) 3 C.L.R. 61;

Ioannou v. *Electricity Authority* (1981) 3 C.L.R. 280 at p. 299;

Kanda v. *Government of Malaya* [1962] A.C. 322 at p. 537;

Kazamias v. *The Republic* (1982) 3 C.L.R. 239;

Byrne v. *Kinematograph Renters Society* [1958] 2 All E.R. 579 at pp. 598, 599;

King v. *Sussex Justices, ex parte Mc Carthy* [1924] 1 K.B. 256 at p. 259;

R. v. *Camborne Justices, ex parte Pearce* [1954] 2 All E.R. 850 at p. 855;

General Medical Council v. *Spackman* [1943] 2 All E.R. 337 at pp. 342, 343, 345;

Local Government Board v. *Arlidge* [1915] A.C. 120 at pp. 132, 140;

Republic of Cyprus v. *Mozoras* (1966) 3 C.L.R. 356 at pp. 401, 402;

Russel v. *Duke of Norfolk* [1949] 1 All E.R. 109 at p. 118;

Re Pergamon Press [1970] 3 All E.R. 535;

Furnell v. *Whangerei High Schools Board* [1973] 1 All E.R. 400 at p. 412;

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

Kyprianou v. *Public Service Commission* (1973) 3 C.L.R. 206 at pp. 219, 222, 223;

Savoulla and Others v. *The Republic* (1973) 3 C.L.R. 706 at pp. 712, 713;

Decisions of the Greek Council of State Nos. 1235/57, 1587/50, 1051/61, 1052/61, 1211/65, 677/66, 2675/68, 1578/50, 426/65, 2115/65, 2654/65 and 1129/66;

Leeson v. *General Medical Council* [1889] 43 Ch. D. 366;

Allinson v. *General Council of Medical Council* [1894] 1 Q.B. 750 at p. 758;

Cooper v. *Wilson* [1937] 2 All E.R. 726 at pp. 735–736, 742;

Rex v. *Varnsley Metropolitan Borough Council* [1976] 3 All E.R. 452;

Vrakas and Another v. *The Republic* (1973) 2 C.L.R. 139 at pp. 155–165;

Franklin and Others v. *Minister of Town and Country Planning* [1947] 2 All E.R. 289 at p. 296;

Metropolitan Properties Co. (F.G.C.) Ltd. v. *Lannon and Others* [1968] 3 All E.R. 304 at p. 310;

Enotiadou v. *The Republic* (1971) 3 C.L.R. 409 at p. 415;

Constantinou v. *The Republic* (1969) 3 C.L.R. 190 at p. 207;

Georghiades v. *The Republic* (1969) 3 C.L.R., 396 at p. 405.

Recourse.

Recourse against the decision of the respondent whereby

applicant was found guilty of certain disciplinary offences and against the decision dismissing her disciplinary appeal.

A. Poetis, for the applicant.

A. Hadjioannou, for the respondent.

Cur. adv. vult.

SAVVIDES J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court to the effect that the decision of the respondents dated 2.6.1979 and or 16.6.1979 by which she was found guilty of certain disciplinary offences as well as the decision of the respondents which was communicated to her by letter dated 26.10.1979 to the effect that her disciplinary appeal was dismissed, are null and void and of no legal effect. The facts of the case are shortly as follows:-

The applicant was at the material time an employee of the Cyprus Telecommunications Authority, holding the post of Operator I. It is an undisputed fact that on the 30th January, 1979 (the date of the alleged disciplinary offences) she was performing the duties of cashier at the Larnaca Sectional office. As a result of certain accusations against the applicant for irregularities in the discharge of her duties and in view of the seriousness of such accusations, the General Manager of the Respondent 1 Authority appointed an investigating officer under regulation 41, paragraph 1(b) of the Personnel General Regulations, to carry out an investigation concerning such accusations and at the same time he interdicted the applicant pending such investigation under regulation 50, paragraph 3 of the same Regulations. By letter dated 31.1.1979 the applicant was informed by the Personnel Manager of the decision of the General Manager to interdict her as from such date and that Nicos Malekos was appointed as an investigating officer to carry out an inquiry concerning accusations against her for "conduct unbecoming to an employee in her capacity as such and/or act capable to cause material or moral damage to the Authority and/or irregularity and breach of trust in administration".

The investigating officer for the purpose of his investigation took written statements from employees of the Authority who were in a position to give any information as to facts related

to the object of his investigation and also collected any material necessary thereto. In the course of such investigation he interviewed the applicant on two occasions, the first on the 2nd February, 1979 and the second on the 12th February, 1979 for the purpose of examining the applicant as to what she had to say respecting the accusations against her. The applicant in a statement signed by her on 2.12.1979 and in answer to a question concerning the condition of her cash collections on 30.1.1979, said the following: "So long as my integrity is at stake, I have nothing to say except that on that date I had a deficit of £11.843 mils which I paid from my handbag". At the interview of 12.2.1979 the answer of the applicant to all questions put to her by the investigating officer was, "I have nothing to say".

The investigating officer after completing his investigation submitted the file containing the statements of witnesses taken by him, including the statements of the applicant together with and other evidential material, to the General Manager of respondent 1 Authority. The General Manager after considering the material put before him came to the conclusion that there was a prima facie case against the applicant for the commission of disciplinary offences, drafted a charge for such offences and submitted the case to the 1st Instance Disciplinary Board of the Authority under the provisions of regulation 41, paragraph 6(a) of the Personnel General Regulations. At the same time, he informed the applicant accordingly by letter dated 24th February, 1979, the contents of which were as follows:

> "Having considered the accusations against you, I have concluded that there is prima facie case against you; therefore and in compliance with Regulation 41 paragraph 6(a) of the Personnel General Regulations, I have drafted the relative charge which I attach herewith and I have referred your case to a Disciplinary Board of five members".

On the same date the General Manager sent another letter to the applicant calling her to attend the hearing of the case before the Disciplinary Board on 22nd March, 1979, informing her at the same time that she could appear personally or accompanied by an advocate or any other person of her choice.

The applicant was represented throughout the proceedings

by an advocate, who, acting on her behalf, prior to the hearing inspected the file of the case and was supplied with copies of all statements of witnesses which were taken by the investigating officer and which contained the evidence intended to be adduced at the hearing, as well as the statements of the applicant which were made to the investigating officer.

On 23.3.1979 the applicant attended the hearing before the First Instance Disciplinary Board which was composed of the General Manager, two Managers, one Assistant Manager and one Section Manager. The presentation and the prosecution of the case on behalf of the Authority was conducted by the Personnel Manager and the defence of the applicant was handled by her counsel. The applicant was charged, pleaded not guilty and the hearing commenced on that day, continued on the following day and was concluded on 29.3.1979. The minutes of the proceedings were produced as exhibit 1 before this Court.

The charge against the applicant as appearing in exhibit 1, reads as follows:

"The aforesaid officer is charged with the commission of the following disciplinary offences, contrary to Regulation 33, paragraph 4, sections (f), (h), (i) and (ih) of the Personnel General Regulations.

1. Conduct unbecoming with the status of an employee.
2. Acts that might cause material or moral damage to the Authority.
3. Irregularities in administration.
4. Acts amounting to abuse of authority or confidence entrusted to her.

On the 30th January, 1979 and whilst the accused was performing the duties of a cashier at the cash of the Larnaca Sectional Office, she made a mistake as a result of which a fictitious surplus was observed in her cash which the accused took away from her cash with the intent to appropriate same.

Moreover, the accused acted in a way tending to harm the good reputation of the Authority in that she involved persons strangers to the Authority for the purpose of covering up her offence".

Respondent (2) Board delivered its decision on 2.6.1979 whereby applicant was found guilty of the charges against her. Counsel for applicant then addressed in mitigation and respondent (2) adjourned its decision on sentence till 16.6.1979 when it decided to impose upon applicant the sentence of dismissal from the service of respondent 1 Authority. Such decision, (copy of which was produced as exhibit 2) was communicated to the applicant by letter dated 16.6 1979. The applicant appealed against such decision, under the Personnel General Regulations, to the 2nd Instance Disciplinary Board which sat as an appellate Court on 8.9.1979 heard the appeal and reserved its decision. Applicant was represented at the hearing of the appeal by her counsel. (The minutes of the hearing of the appeal appear in exhibit 3). The members of the 2nd Instance Disciplinary Board met on 15.10.1979 and reached their decision whereby the appeal was dismissed both in respect of conviction and in respect of the sentence imposed upon the applicant. (Copy of such decision is before this Court as exhibit 4) Such decision was communicated to the applicant by letter dated 26.10.1979, in consequence of which the applicant filed the present recourse against the respondent Authority as respondent 1 and against the 1st Instance Disciplinary Board as respondent 2. As I have heard no argument as to whether respondent 2 was a necessary party to these proceedings or not, especially in view of the fact that its decision was dealt with on appeal by the 2nd Instance Disciplinary Board whose decision was the final decision and the latter was not considered as a necessary party in the proceedings and as no objection was raised in this respect, I shall not deal with this matter.

The grounds of law on which the recourse is based, 16 in number, are set out in the application They may be grouped as follows:-

(A) Grounds 1-7 inclusive, concern procedural irregularities in respect of which objections were made during the trial. Such alleged irregularities are:

(1) The participation of the General Manager who was the person who drafted the charge against the applicant, was irregular.

(2) The determination of an objection raised in respect of

such participation without hearing argument, was irregular.

(3) The President of respondent 2 was deciding the objections himself without consulting the other members.

(4) The President stated that the Board expected from the applicant to prove that she was innocent in order to acquit her.

(5) Notwithstanding the fact that there was a preliminary objection as to the framing of the charge, in that particulars of the facts on which each count was based were not stated in each count, such objection was left to be decided at the end thus the applicant was not aware of the real facts when defending herself.

(6) Evidence as to previous conduct of the applicant was heard.

(7) The above irregularities amount to violation of the rules of natural justice.

(B) Matters touching the weight of evidence adduced and conviction on such evidence.

(1) The surplus is referred to as "fictitious" which means that there was no surplus which the applicant appropriated (legal ground 8).

(2) There was no evidence in support of the charge (legal ground 9).

(3) The Board was not sure about the guilt of the applicant; nevertheless, found her guilty (legal ground 10).

(C) Matters touching the decision itself:

(1) The applicant was found guilty on alternative counts, i.e. guilty on counts 1 and 2 or alternatively counts 3 and 4 (legal ground 11).

(2) The decision is unfounded (legal ground 14).

(D) Matters touching sentence.

(1) The Board felt bound to impose the sentence of dismissal (legal ground 13).

(2) The sentence was imposed on a different date from that of the adjudication of the guilt (legal ground 15).

(3) The mitigating circumstances of the applicant were not taken into consideration (legal ground 12).

The last legal ground concerns the decision on appeal before the Second Instance Disciplinary Board and is to the effect that such Board made the same mistakes and/or it failed to give any reasons and/or it did not understand the arguments of the applicant before it.

At this stage I would like to point out that expressions in brackets accompanying the grounds of law, such as "prota-kouston!!!!!" ("unheard of") followed by explanatory marks as it happened in the present case, not only they do not add anything of substance to the force of the legal ground but on the contrary, they may be taken as tending to show an effort to impress the reader by the addition of such remarks and exclamations rather than the substance of the legal ground. The least I should say in this respect, is that I consider the inclusion of such expressions as scandalous, unnecessary and undesirable.

The application was opposed and the legal grounds set out in the opposition are:

"1. The recourse in so far as the decision of 2.6.1979 of Respondent 2 is concerned, is out of time as more than 75 days elapsed since the day when such decision was communicated to the applicant and the day when the recourse was filed.

2. Though by the present recourse two decisions are being attacked, the one being the decision of the First Instance Disciplinary Board in respect of which the time has elapsed, and the other that of the Appellate Board of the Authority, legal grounds 1-15 relate expressly to the decision dated 2.6.1979 of Respondent 2, whereas ground 16 which is expressly directed against the decision of the Appellate Board (the Second Instance Disciplinary Board) merely adopts grounds 1-15 with the only addition that the decision of the 2nd Instance Disciplinary Board on Appeal which was communicated to the applicant on

26.10.1979 is not reasoned and such Appellate Board did not understand the arguments of the applicant.

3. Without prejudice to the above, it is alleged that the sub judice decision was lawfully taken for the following reasons:

(a) The General Manager was not the prosecutor and Chairman of the 1st Instance Disciplinary Board at the same time but only the Chairman and the duty of the prosecutor was carried out by the Personnel Manager. The General Manager drafted the charge under the provisions of Regulation 41(6)(a) of the Personnel General Regulations because he thought that there was evidence justifying such course. This, however, does not mean that he decided about the guilt of the applicant. It is for this reason that he wrote 'there is a prima facie case'. These were expounded by counsel for applicant before the Disciplinary Board at length, as well as grounds 2, 3, 4 up upto and including 15 as they appear in detail in the minutes which are attached as exhibit 'A' in the present recourse.

(b) A careful persual of the minutes proves that the above mentioned grounds are legally unfounded and that the decision of the Board was legally taken. Respondents will refer to the said minutes as well as the minutes of the appeal which are attached as exhibit 'B' as well as to the sub judice decisions which are attached as exhibit 'C', and the relevant Regulations of the Personnel General Regulations.

(c) Respondents stress the fact that all the facts and the evidence were made available to the applicant, as well as the whole file together with the charge-sheet and applicant was fully informed and she was not in any way hindered in her defence; the seriousness of the sentence is not a ground for annulment".

Pausing here for a moment, I wish to remark that in administrative recourses the legal grounds on which both the application and the opposition are based, must be stated precisely and concisely to enable the reader to understand in the first

instance, what is the issue in the case, leaving full argument and exposition of the law at the hearing. In the present case in ground 3(a) instead of a mere presentation of a legal ground, a whole argument is set out, concluding with a general and abstract reference to the legal arguments contained in the voluminous record of the proceedings attached to the opposition. I wish also to point out that in ground 3(a) of the Opp. there is reference to the address before the Disciplinary Board of "counsel for applicant". I presume that this is a clerical mistake and counsel for respondents, most likely, intended to refer to counsel for the respondents and not to counsel for applicant As this, however, is not a matter which may have any bearing in the outcome of the case, I leave it at that.

Counsel for applicant in his address in support of the grounds that the framing of the charge was defective contended:

(a) That it did not contain particulars of facts in respect of each charge

(b) The statements of facts refer to all counts in general, without any specification as to which of such facts refer to each specific charge. Furthermore, the facts contained in the last paragraph of the statement of facts are not referred to in anyone of the charges

(c) An objection was taken at the hearing as to the way the charge was drafted and decision was reserved on such objection The decision was taken at the end of the trial together with the final decision dealing with the substance of the case.

(d) It was repugnant to regulation 45, paragraph 4 which expressly provides that in disciplinary proceedings all real facts constituting the offence charged as well as any existing elements of guilt should be defined.

In dealing with legal ground 6, he drew the attention of the Court to certain parts of the evidence, as appearing in the record of the proceedings, where evidence on facts as to previous conduct of the applicant not referred to in the charge was allowed, notwithstanding that objection was taken on several occasions on the admissibility of such evidence. The admission of such

evidence, counsel contended, was contrary to regulation 45, paragraph 4 which safeguards the basic rule of natural justice that an accused person should know what he is going to face at the trial and have time to make his defence. It was also contrary to regulation 46, paragraph 4 which provides that the trial should be conducted as far as possible in the same manner as a criminal case tried summarily, and in criminal proceedings evidence of other acts or previous conduct of the accused not related to the case under trial, is not admissible. Furthermore, the admission of such evidence amounts to violation of the rules of natural justice because by the introduction of such facts the applicant was taken by surprise and was confronted with facts which she did not have in mind and she did not prepare to defend herself. Also, by the admission of such evidence, the Board was influenced in forming an opinion in the case. In any event, the reason for which such evidence was admitted is legally unfounded.

Dealing with the ground that the procedure was contrary to the Personnel General Regulations, he referred to the provisions of regulation 45(5) and stressed the fact that whereas under the said regulation the disciplinary proceedings are communicated to the interested party and they are subsequently sent to the secretary of the Disciplinary Board, in the present case such course was not followed. In the letter of the General Manager dated 24.2.1979 sent to the applicant, the following are mentioned:

> "Having considered the accusations against you I have drafted the respective charge which I am sending to you and I have referred your case to the Disciplinary Board consisting of five members".

Such course, according to counsel for applicant, has deprived the applicant of the possibility to give any explanations on the accusations against her before the case was presented to the Disciplinary Board.

As to the participation of the General Manager in the First Instance Disciplinary Board, counsel submitted that under regulation 41(6)(a) of the Regulations, it is the duty of the General Manager to examine all the material necessary in the case and if he considers that a disciplinary offence has been

committed, then he sends the case to the Disciplinary Board. In the present case the General Manager had already formed an opinion about the guilt of the applicant, as it appears in the letter of the 24th February, 1979, whereby he informed the applicant that he concluded that there was a prima facie case against her and, therefore, by his participation as Chairman of the respondent 2 Board he acted in violation of the rules of natural justice. He also submitted that once the Audit Roll was amongst the documents handed to the General Manager by the Investigating Officer, the General Manager was a necessary witness and could not preside the Board which was trying the case. He finally added that the General Manager was biased against the applicant, a fact which is evidenced by the conduct of the General Manager during the proceedings before the respondent 2 Board, as appearing on the record and gave amongst others, the following examples:

(1) The General Manager was changing his rulings all the time.

(2) When a question as to the production of a certain book arose the General Manager said, "if it is necessary to have it produced, we shall produce it".

(3) One of the witnesses said in his evidence that a colleague of his told him that the General Manager said to him that if the applicant continued to make trouble, the General Manager intended to interdict her and that they should not raise any objection to that.

Dealing with the substance of the charge and the evidence adduced, counsel contended that there was no evidence that there was any surplus and what was the exact amount of such surplus. Even if it is accepted that there was a surplus, such surplus must be a real one and not fictitious and the applicant is not charged for appropriating a real surplus but that she appropriated a fictitious surplus.

In concluding on the legal grounds relating to the decision of respondent 2 Board, he submitted that the fact that members of the Disciplinary Board were not sure as to the guilt of the accused is manifested by their finding the applicant guilty on counts 1 and 2 and alternatively, on counts 3 and 4.

Counsel for applicant in expounding legal ground 16 which refers to the decision of the Appellate Board (the Second Instance Disciplinary Board) submitted that the decision of the respondent 2 Board and that of the Appellate Board constitute a composite administrative act and any defect in the decision of the respondent 1 Board which renders such decision a nullity, affects also the decision of the Appellate Board once the latter affirmed the decision of the respondent 2 Board and, therefore, his arguments on grounds 1–15 extend and apply to ground 16 and he concluded as follows:

> "The way of thought and the line of direction of the Appellate Board appear in paragraphs 3 and 4 of the second page of the decision which speak for themselves and, therefore, I shall make no comment on them".

I shall pause here again to observe that it is the duty of counsel to make comments on any matters which he deems necessary to establish his case and not just state in general terms that the facts speak for themselves and that he will make no comments.

In conclusion, he submitted that under regulation 47(5) the period for filing a recourse against the decision of the respondent 2 Board is suspended when an appeal is made to the Appellate Board and therefore the present recourse in so far as the decision of respondent 2 Board is concerned, was not filed out of time.

Counsel for the respondents contended—

(a) that the recourse against the decision of respondent 2 Board is out of time. Such decision is a complete executory act and under Article 146.2 of the Constitution the applicant had a right to attack it, provided that she filed her recourse within the period of 75 days and any provision in the Regulations to the contrary, cannot override the provisions of the Constitution. The stay of execution provided for by regulation 47(5) of the Personnel General Regulations, suspends only the execution pending an appeal but does not divest a person of his legal right under the Constitution to contest its validity by filing a recourse.

(b) The decision of the respondent 2 Board lost its executory character, once it has been challenged by way of appeal to the

Second Instance Disciplinary Board and it has merged in the decision of the latter.

The procedure contemplated by the Rules does not make the decision of the First Instance Board and that of the Appellate Board a composite act but each one is self-contained and once the decision of the respondent 2 Board is barred by limitation of time, the only decision which could be the subject of a recourse is that of the Appellate Board which is the final decision.

(c) The recourse against the decision of the Second Instance Disciplinary Board is legally unfounded as no legal grounds are given in support of the allegation that such decision is null and void; the fifteen grounds which are set out in the application are in support of the recourse against the decision of the First Instance Disciplinary Board and only ground 16 is advanced against the decision of the Appellate Board. The said fifteen grounds refer to the composition and the procedure before the First Instance Disciplinary Board the decision of which has not been challenged in time, and have nothing to do with the procedure before the Appellate Board.

(d) The procedure before the respondent 2 Board was procedure before an administrative Tribunal and therefore compliance with the rules of procedure and evidence is not so strict as in the case of trial before a Criminal Court.

(e) Evidence of similar conduct by the applicant on other occasions was admissible to prove mens rea or intent or system in view of the nature of the charge which the accused was facing. In any event the admission of such evidence does not nullify the proceedings once there was other ample admissible evidence which was accepted by the respondent 2 Disciplinary Board and on which the applicant was found guilty.

(f) Sufficient particulars were mentioned in the charge, enabling the applicant to make her defence, but in addition, the whole file of the case containing the evidence against her was made available to her and she knew the evidence proposed to be tendered against her and could prepare her defence. Furthermore, all the particulars set out in the charge referred to all and each one of the offences respectively.

Counsel concluded his address by submitting that both deci-

sions are duly reasoned and in the decision of the respondent 2 Board the evidence is analysed as well as the reasons why the accused was found guilty; the contents of such decision clearly show that in reaching their decision the members of the Board were not influenced by any facts emanating from inadmissible evidence or answers to questions objected to.

Before dealing with the legal grounds posing for consideration in the present case, I shall examine briefly the preliminary objection raised by counsel for respondents, in that the recourse against the decision of respondent 2 is out of time and that in any event it lost its executory character having merged in the decision of the Second Instance Disciplinary Board.

Counsel for applicant contended that the decision of respondent 2 and that of the Second Instance Disciplinary Board constitute a composite administrative act and, therefore, each one of them can be the subject of a recourse before this Court.

It is correct that in the case of a composite administrative act, if the component parts have the characteristics of an executory act, they preserve their executory character and each one of them is capable of being challenged by recourse. But when the composite administrative act is completed, the independent intermediate parts merge into the final act and their executory character is lost by such changes and cannot be challenged individually. The legal position is summed up by Tsatsos—Recourse for Annulment, 3rd Ed. at p. 152 as follows:

" 'Αφ' ἧς ὅμως ἡ σύνθετος διοικητικὴ ἐνέργεια περατωθῇ, ἀποβαίνει ἀπαράδεκτος ἡ προσβολὴ δι' αἰτήσεως ἀκυρώσεως τῆς ἀρχικῆς ἢ μεμονωμένης τῶν ἐνδιαμέσων πράξεων, αἵτινες ἀποβάλλουσι πλέον τὸν αὐτοτελῶς ἐκτελεστὸν αὐτῶν χαρακτῆρα. Προσβλητὴ ἐφεξῆς εἶναι μόνον ἡ ὅλη σειρὰ τῶν οὕτω διὰ τοῦ ἀποτελέσματος, εἰς ὃ ἀπέβλεψαν, συνεχομένων πράξεων. Προσβαλλομένης δὲ τυχὸν μόνης τῆς τελικῆς πράξεως θεωρεῖται συμπροσβαλλομένη ἡ ὅλη σύνθετος διοικητικὴ ἐνέργεια καὶ τοῦτο διότι μετὰ τὴν περάτωσιν τῆς συνθέτου διοικητικῆς ἐνέργειας αἱ προηγηθεῖσαι τῆς τελικῆς μερικώτεραι καὶ πρότερον αὐθύπαρκτοι πράξεις ἀπόλλυσι τὴν αὐτοτέλειαν αὐτῶν".

("From the moment, however, that the composite administrative act is completed, the challenge of the original

or isolated intermediate acts which lose their individual executory character, becomes unacceptable. Capable of being challenged thereafter is the whole series of all interconnected acts which aimed at the achieved result. And when only the final act is challenged, the whole composite act is considered as challenged at the same time and this because after the completion of the composite administrative act those acts which preceded the final act, and which were partial and independent, lose their self-contained character").

Also in the Conclusions from the Jurisprudence of the Greek Council of State, 1929–1959 at p. 244, under the heading "Composite Administrative Act" it reads:

"Μετὰ τὴν ἔκδοσιν τῆς διοικητικῆς πράξεως τῆς ἀποτελούσης τὸ τέρμα τῆς ὅλης συνθέτου διοικητικῆς ἐνεργείας, αὕτη ἀπετελεῖ ἔκτοτε ἐνιαίαν πρᾶξιν, πλήρως συντελεσθεῖσαν, καὶ συνεπῶς ἐφεξῆς προσβλητὴ εἶναι μόνον ἡ τελευταία πρᾶξις, οὐχὶ δὲ αὐτοτελῶς μεμονωμένη καὶ ἐνδιάμεσος πρᾶξις, ἥτις ἀπώλεσε τὴν ἰδίαν αὐτῆς αὐτοτέλειαν συγχωνευθεῖσα εἰς τὴν τελικήν. Προσβαλλομένης ὅμως τῆς τελικῆς πράξεως παραδεκτῶς προβάλλονται καὶ λόγοι ἀναγόμενοι εἰς τὰς μερικωτέρας καὶ συγχωνευθείσας πράξεις, ἡ διαπίστωσις δὲ τῆς ἀκυρότητος τινὸς ἐξ αὐτῶν ἐπιφέρει τὴν ἀκυρότητα τῶν ἀκολουθησασῶν μερικωτέρων πράξεων, διὰ τὴν ἔκδοσιν τῶν ὁποίων ἡ κριθεῖσα ὡς παράνομος ἀποτελεῖ νόμιμον προυπόθεσιν".

("After the issue of the administrative act constituting the end of the whole composite administrative action the same constitutes then a single act, fully completed and consequently thereafter only the final act can be challenged but not the separate and isolated intermediate act which has lost its individual executory character having been merged in the final act. By challenging the final act it is accepted that reasons referring to smaller and merged acts may be put forward, and the assertainment of the invalidity of any one of them brings about the invalidity of the subsequent smaller acts, for the issue of which the act which was found to be illegal constitutes a legal prerequisite").

and at p. 242:

" . . . . . Ἐπίσης ἐνσω-

ματοῦται ἡ πρᾶξις πρωτοβαθμίου διοικητικοῦ ὀργάνου κατόπιν προσφυγῆς, κατὰ νόμον ἀσκουμένης ἐνώπιον δευτεροβαθμίου, εἰς τὴν ἀπόφασιν τοῦ τελευταίου .....".

(" ---------- Also the act of a first instance administrative organ is incorporated, after a recourse, made in accordance with the law before a higher organ, in the decision of the latter----").

(See also Kyriacopoulos—Administrative Law, vol. C at pp. 98, 99, Spiliotopoulos—Manual on Administrative Law, paragraph 159 at pp. 154, 155).

There are numerous decisions of the Greek Council of State confirming the above principle. I shall refer only to a few of them which have some bearing in the present case. In Case 1235/57 where the Council was dealing with a decision of a Second Instance Committee which had dismissed the appeal of the applicant from the decision of a First Instance Committee, it was held that the decision of the First Instance Committee which was challenged together with the decision of the Second Instance Committee, had lost its executory character having merged in the decision of the Second Instance Committee. In Case 1587/50 in similar circumstances, it was held that the decision in the First Instance was not an executory act any longer after the decision of the Second Instance Committee, as it had lost its self-existence having been incorporated in the last one which was the only executory act capable of being challenged. Also, in Case 1587/50 in which the recourse was directed both against the decision of the executive committee of a Hospital and against the decision of the Board of the Hospital whereby the appeal from the decision of the executive committee was dismissed, it was held that the recourse against the first instance decision was unacceptable as it had lost its executive character due to the decision of the appellate Board and in consequence the only decision which could be challenged was that of the Appellate Board.

In the decision of our Supreme Constitutional Court in *Pelides and The Republic* (1962) 3 R.S.C.C. p. 13 at pp. 17, 18, it was held that:

"The Court takes this opportunity of stressing that though

Article 146 grants it exclusive jurisdiction in administrative law matters there is nothing in such Article to prevent procedures for administrative review of executive or administrative acts or decisions from being provided for in a Law. Such review may be either—

(a) by way of confirmation or completion of the act or decision in question, in which case no recourse is possible to this Court until such confirmation or completion has taken place (e.g. under section 17 of CAP 96); or

(b) by way of review by higher authority or by specially set-up organs or bodies of an administrative nature, in which case a provision for such a review will not be a bar to a recourse before this Court but once the procedure for such a review has been set in motion by a person concerned no recourse is possible to this Court until the review has been completed.

Such review procedures, as aforesaid, are in no way contrary to, or inconsistent with, Article 30 of the Constitution because specially set-up organs or bodies of an administrative nature are not judicial committees or exceptional courts in the sense of paragraph 1 of such Article".

Reverting now to the case under consideration I have come to the conclusion that the decision of the First Instance Disciplinary Board has merged in the decision of the Second Instance Appellate Board and in consequence it has lost its executory character and cannot be challenged by the present recourse. The only decision that can be challenged is that of the Second Instance Disciplinary Board.

It is, however, well settled that though the last decision of a composite administrative act is the only one that can be challenged, nevertheless, once the intermediate component parts are a legal prerequisite to the final act, their validity may be examined in deciding the validity of the final act, as the invalidity of a part of a composite administrative act renders all acts which follow, including the final concluded act, null and void. (See Kyriacopoulos—Greek Administrative Law, Vol. 3 at p. 99, Tsatsos—Recourse for annulment, 3rd Ed. at p. 152,

Conclusions from the Jurisprudence of the Greek Council of State (1929–1959) at p. 24 and also our own case law. See, inter alia, *Orphanides* v. *The Republic* (1968) 3 C.L.R. 385, at p. 392, *Nemitsas Industries Ltd.* v. *The Municipal Corporation of Limassol and Another* (1967) 3 C.L.R. 134, *Savvas Hji-Georghiou* v. *The Republic* (1974) 3 C.L.R. 436 at p. 445, *Ero Angelidou and Others* v. *The Republic* (1975) 3 C.L.R. 404, *Christodoulou and Another* v. *CYTA* (1978) 3 C.L.R. 61, *Ioannou* v. *Electricity Authority* (1981) 3 C.L.R. 280 at p. 299).

Therefore, though the decision of the First Instance Board cannot be challenged by the present recourse, the grounds of appeal advanced against the validity of such decision and argued before the Second Instance Disciplinary Board and which were rejected by such Board may be grounds of law in considering the validity of the decision of the Second Instance Disciplinary Board. For this reason, I find that grounds 1–15 of this recourse, though directed against the decision of the First Instance Disciplinary Board being grounds of law intended to establish the irregularity or the validity of acts or decisions which preceded the decision of the Second Instance Disciplinary Board, which is the final decision challenged under paragraph B of the prayer in this recourse, have to be examined.

Legal grounds 1–6 refer to irregularities at the hearing which, according to legal ground 7, amount to violation of the rules of natural justice.

The rules of natural justice which may, briefly, be expressed in the words that "no man shall be a judge in his own cause and both sides shall be heard" have been interpreted by the Courts to mean impartiality and fairness on the part of a judge in the exercise of his judicial function or on the part of an administrator in the exercise of a quasi judicial function.

In *Kanda* v. *Government of Malaya* [1962] A.C. 322, Lord Denning, at p. 337 summarised such rules as follows:

> "The Romans put them in the two maxims; Nemo judex in cause sua: and Audi alteram partem. They have recently been put in the two words, Impartiality and Fairness".

In a recent case, *Kazamias* v. *The Republic* (1982) 3 C.L.R. 239, I had the opportunity of reviewing a number of cases and legal

authorities on the rules of natural justice and I adopt what I said in that case in this respect.

In *Byrne* v. *Kinematograph Renters Society*, [1958] 2 All E.R. 579, Harman, J. in expounding the principles which should govern an inquiry carried out by a quasi judicial body when the interests of an individual are at stake and after considering a line of English decisions on this point, concluded as follows at page 599:

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

Under the principles of Impartiality and Fairness the rule against bias has also evolved, the existence of which may vitiate a judicial or quasi judicial decision. The rule against bias is important because using Lord Hewart's, C.J., words in *The King* v. *Sussex Justices, ex parte McCarthy* [1924] 1 K.B. 256 at p. 259, "justice should not only be done, but should manifestly and undoubtedly be seen to be done".

In dealing with the above principle in *R.* v. *Camborne Justices ex parte Pearce* [1954] 2 All E.R. 850, Slade J., at p. 855 had this to say:

> "While indorsing and fully maintaining the integrity of the principle reasserted by Lord Hewart, C.J., this Court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than it should in fact be done".

The application of the rules of natural justice before administrative tribunals does not however impose an obligation on them to adopt the regular form of judicial procedure.

In *General Medical Council* v. *Spackman* [1943] 2 All E.R. 337, a House of Lords decision, Lord Wright had this to say at pp. 342, 343:

"The question of a failure of 'natural justice' is what is

to be considered in this appeal. But before considering the meaning of these words, I must first observe that they can in this case be properly taken as a description of what the council has to do, namely, to make 'due inquiry', which under the statute is the governing criterion, that is an independent inquiry by the council as the body responsible for its own decision.

'Natural justice' seems to be used in contrast with any formal or technical rule of law or procedure. Some light on what it connotes may be got from the authorities, to certain of which I now refer. Thus *Spackman* v. *Plumstead Board of Works*(1) was a case of administrative decision in a matter of local government. Under the relevant Act an architect's certificate was made conclusive for fixing a general line for buildings. The EARL OF SELBORNE, at p. 240 made some general observations, and said:

No doubt in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that *the substantial requirements of justice* shall not be violated. He is not a judge in the proper sense of the word; but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice that he will proceed with the matter, and he must act honestly and impartially and not under the dictation of some other person or persons to whom the authority is not given by law. There must be no malversation of any kind. There could be no decision within the meaning of the statute if there were anything of that sort done contrary to *the essence of justice.* I have italicised the two phrases which the EARL OF SELBORNE seems to me to use as meaning what is generally meant by 'natural justice'. He adds at p. 240.

——— This is a matter not of a kind requiring form, not of a kind requiring litigation at all, but requiring only that the parties should have an opportunity of submitting to the person by whose decision they are to be bound such

(1) [1885] 10 App. Cas. 229.

considerations as in their judgment ought to be brought before him".

And he concluded on this point at p. 345, as follows:

"If the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from the essential principles of justice. The decision must be declared to be no decision".

In *Local Government Board* v. *Arlidge* [1915] A.C. 120, Viscount Haldane, L.J., at p. 132, had this to say:

"..... when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made. The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a Court of law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal. In modern times it has become increasingly common for Parliament to give an appeal in matters which really pertain to administration, rather than to the exercise of the judicial functions of an ordinary Court, to authorities whose functions are administrative and not in the ordinary sense judicial".

And Lord Parmoor, at page 140, said:

"Where, however, the question of the propriety of procedure is raised in a hearing before some tribunal other than a Court of law there is no obligation to adopt the regular forms of legal procedure. It is sufficient that the case has been heard in a judicial spirit and in accordance with the principles of substantial justice.

In determining whether the principles of substantial justice have been complied with in matters of procedure,

regard must necessarily be had to the nature of the issue to be determined and the constitution of the tribunal".

Josephides, J., in *The Republic of Cyprus and Mozoras* (1966) 3 C.L.R. 356, after referring to the above dictums, said at pp. 401, 402:

"It will thus be seen that in applying the rules of natural justice there is no obligation on the tribunal to adopt the regular forms of judicial procedure; it is sufficient if the hearing is made in accordance with the principles of substantial justice, and the duty is discharged by hearing evidence viva voce or otherwise (see *General Medical Council* v. *Spackman* [1943] 2 All E.R. 337, per Viscount Simon L.C. at page 340). In short, it is not required of a tribunal to conduct itself as a court or to conduct a trial. Provided they act in good faith, they can obtain information in any way they think best, always giving a fair opportunity to those who are parties in the controversy for correcting or contradicting any relevant statement prejudicial to their view (per Lord Loreburn L.C., in *Board of Education* v. *Rice* [1911] A.C. 179 at page 182)".

Harman, J., in *Byrne* v. *Kinematrograph Renters Society* (supra) at p. 598. said:

"It seems to me that bodies like K.R.S., who exercise monopolistic powers and may ruin a man by their recommendations, ought not to act in an arbitrary manner or, at the least, that, if they do, as this body did, set up an investigation committee which is a quasi-judicial body, they must be taken to hold out to those over whom they claim to exercise jurisdiction the assurance that the proceedings will be fair. Indeed, in the present case the plaintiff was expressly told that he would get a fair hearing. It has, however, often been pointed out that it is a great mistake to suppose that the principles of natural justice require a body of this sort to conduct themselves as though they were a court of law".

And went on citing the following which was said by Tucker, L.J., in *Russel* v. *Duke of Norfolk* [1949] 1 All E.R. 109 at p. 118:

"Throughout this inquiry (the plaintiff) was, at every

stage, it seems to me, given an opportunity of presenting his case and of asking any question which he desired to ask. It is true that he was not in terms asked: 'Have you got any witnesses? Do you want an adjournment?'. A layman at an inquiry of this kind is, of course, at a grave disadvantage compared with a trained advocate, but that is a necessary result of these domestic tribunals which proceed in a somewhat informal manner. Counsel for the plaintiff, in the course of his forceful argument on this point, again and again said: 'What would be said of local justices who acted in this way?'. With all due respect, the position is totally different. This matter is not to be judged by the standards applicable to local justices. Domestic tribunals of this kind are entitled to act in a way which would not be permissible on the part of local justices sitting as a court of law. The conclusion I have reached on this aspect of the case is that there was no material on which a jury could have arrived at a conclusion that this inquiry was conducted in a way contrary to the principles of natural justice. If, as I think is the better view, it really was a matter of law for the decision of the judge, I should unhesitatingly hold that there was nothing here which was contrary to the principles of natural justice as laid down in the various authorities which have been brought to our notice. There are, in my view, no words which are of universal application to every kind of inquiry and every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth. Accordingly, I do not derive much assistance from the definitions of natural justice which have been from time to time used ....."

The above view of Tucker, L.J., has been referred to with approval on many occasions in recent English case law (see, inter alia, *Re Pergamon Press Ltd.* [1970] 3 All E.R. 535, *Furnell* v. *Whangarei High Schools Board* [1973] 1 All E.R. 400 at p. 412, and in our own cases, *The Republic* v. *Georghiades* (1972) 3 C.L.R. 594, *Kyprianou* v. *Public Service Commission* (1973) 3 C.L.R. p. 206).

Having dealt with the legal principles relating to the applica-

tion of the rules of natural justice in proceedings before administrative tribunals in the discharge of quasi judicial functions, I am coming now to consider whether there was a violation of such rules, as alleged by counsel for the applicant.

I shall deal first with ground 1 which is directed against the participation of the General Manager in the Disciplinary Board because, as it is contended, once he was the person who framed the charge against the applicant, he formed an opinion about the guilt of the applicant, as a result of which he was biased during the trial.

Under the Personnel General Regulations (regulation 41), it is the duty of the General Manager of the Authority when it is reported to him by the Head of a Section or Office of the Authority that a disciplinary offence was committed, to adopt one of the following courses:

(a) If no further investigation is necessary in respect of the commission of such offence then he has to formulate the charge and send the case for trial before the Disciplinary Board.

(b) If the offence is of such nature that requires further investigation, he has to appoint one or more investigating officers of a higher rank to that of the person against whom the investigation is made, to carry out an investigation.

It is the duty of such investigating officer to hear witnesses, take their statements, hear and take a statement from the person against whom the accusation is made and after completing the dossier of the investigation, to submit same together with any real evidence to the General Manager. The General Manager, after considering the material submitted to him, he can either put an end to the investigation, if he comes to the conclusion that there is no prima facie case for the commission of the disciplinary offence, or, if satisfied that there is a prima facie case, he must formulate the charge and remit the case to the competent Disciplinary Board, informing at the same time the employee concerned, about the course taken.

In cases where the offence is not so serious as to deserve any

punishment, such as reduction in office, temporary suspension from work, compulsory retirement or dismissal, the case may be dealt with by the General Manager or his Deputy, or by a Disciplinary Board consisting of three members appointed for such purpose, by the General Manager or his Deputy. When the offence is of a more serious nature, involving more serious sanctions such as compulsory retirement, or dismissal, the competent organ to deal with the case is the First Instance Disciplinary Board which, under regulation 44 is composed of the General Manager as Chairman, three Managers from the highest personnel of the Authority and one employee of the Authority elected by the General Manager amongst those employees of the higher or highest personnel recommended by the Personnel Trade Union.

In the present case, due to the serious nature of the accusations, the General Manager submitted the case for trial before the First Instance Disciplinary Board. The complaint of the applicant is that the General Manager had already made up his mind about her guilt when drafting the charge and informing her that there was a prima facie case against her, and, therefore, his participation as a Chairman of the Disciplinary Board, in the circumstances, amounts to violation of the rules of natural justice because being the person who initiated the proceedings was biased against the applicant.

I find myself unable to agree with counsel for applicant on this contention. The General Manager was neither the person who carried out the investigation against the applicant, nor the person who prosecuted the applicant in this case. The General Manager in the discharge of his duties under the Regulations, when complaints were made to him against the applicant about the commission of disciplinary offences, he assigned a Senior Officer of the Authority as an investigating officer to investigate the case. When such investigation was completed and the dossier of the case was submitted to him, he found that the material contained therein disclosed a prima facie case against the applicant for the commission of certain disciplinary offences. In compliance with the Regulations, he drafted a charge in respect of such offences, and sent the case for trial before the competent Board. The case was prosecuted before the Disciplinary Board by the Personnel Manager, under regulation 44(7)(a). At

no time did the General Manager take any decision as to the guilt of the accused. The only action he took after considering the evidence put before him, was to draft the charge and send the case for trial, informing the applicant accordingly. As from the time of the appointment of the investigating officer till and including the trial by the First Instance Disciplinary Board, the General Manager was acting in compliance with the provisions of the Personnel General Regulations.

In *Savoulla and Others* v. *The Republic* (1973) 3 C.L.R. 706 where the promotion to the rank of Sergeant of a number of police officers was contested by the applicant who was not promoted on the ground that the promotions were effected by the Acting Commander of the Police on the recommendation of the relevant Selection Board which was chaired by him, it was held that:

> "——— the participation of the Deputy Commander in the Selection Board, during the time when he was Acting Commander, and his conduct, later, in deciding, in his capacity as Acting Commander, on the promotions to be made, though perhaps undesirable, did not, nevertheless, amount to a material irregularity vitiating the Administrative process which resulted in the promotions challenged by these recourses".

Before reaching such conclusion the Court asserted the principle concerning the undesirability of the participation in the functioning of two organs, the one which expresses the formal opinion and the organ which takes the final decision. At pp. 712, 713 of the judgment, Triantafyllides, P. had this to say:

> "It is correct that it is a principle of administrative law that where the administrative process concerned requires action on the part of two distinct organs—(one of them being a collective organ empowered to express a formal opinion and the other of them being the organ which takes the final decision after examining the correctness of such opinion)—the organ which is responsible for reaching the final decision should, unless a Law otherwise provides, be different from, and should not participate in the functioning of, the organ which expresses the formal opinion, so that the organ taking the final decision can reach its

own independent conclusion (see, inter alia, the decisions of the Council of State in Greece in Cases Nos. 2764/1964 and 2517/1967)".

In the case of *Kyprianou* v. *The Public Service Commission* (1973) 3 C.L.R. 206, where one of the complaints was that the head of the Inland Revenue Department Mr. N. Ionides, who reported the applicant to the Commission and who was a complainant regarding applicant's conduct directly affecting him, appeared before the Commission during the disciplinary proceedings not only as a witness but also, as a person who was putting questions to witnesses testifying before the Commission who were his subordinates in his Department and as it was alleged, could not feel entirely free to speak the whole truth and say things against Mr. Ionides, Triantafyllides, P., at p. 219 concluded as follows on this point:

"In the light of the foregoing I am of the view that no irregularity occurred because of anything done by Mr. Ionides in connection with the disciplinary process against the applicant; even if it were to be assumed that anything complained of in this respect by the applicant amounted to an irregularity, there is definitely no doubt in my mind that such irregularity was not of a material nature; and it has been accepted by case-law that there are irregularities which are of a substantial nature and affect the validity of the relevant administrative process and that there are also less serious, immaterial, irregularities which do not affect such validity (see, in this respect, Traite Pratique de la Fonction Publique by Plantey, 3rd ed., vol. A., p. 495, paragraph 1544, and Contentieux Administratif by Odent, 1970/71, vol. 5, p. 1446)".

In the Greek Administrative Law though the principle that a person cannot be a judge in his own case is well founded there are exceptions either provided by law (Cases 1051/61, 1052/61, 1211/65, 677/66, 2675/68) or by the regulation concerning the constitution of the collective organ. Furthermore, there are decisions of the Greek Council of State where the participation of the person who took the first instance decision in the collective organ which dealt with the validity of such decision, was found as not violating the above principle. Thus, in Case 1578/50, where administrative investigation which led to the conviction

of the applicant was also a member of the appellate Board which dismissed the appeal of the applicant, it was held:

" Ἐπειδὴ ἐπὶ τοῦ γεγονότος ὅτι τὴν διοικητικὴν ἀνάκρισιν, κατόπιν τῆς ὁποίας ἐξεδόθη ἡ προσβαλλομένη ἀπόφασις, διεξήγαγεν ὁ ἰατρὸς, Α. Μαντῆς, μέλος τοῦ 'Αδελφάτου τοῦ Νοσοκομείου, οὐδεμία δύναται νὰ θεμελιωθῇ ἀκυρότης, διότι οὔτε αἱ διατάξεις τῶν ἄρθρων 25–47 τοῦ ν. 4548 τοῦ 1930 'περὶ καταστάσεως τῶν δημοτικῶν ὑπαλλήλων'— αἵτινες, ρυθμίζουσι τὰ τῆς πειθαρχικῆς διώξεως τῶν δημοτικῶν ὑπαλλήλων, οὔτε αἱ διατάξεις τοῦ ἀπὸ 17 Μαΐου–8 'Ιουνίου 1944 διατάγματος 'περὶ κωδικοποιήσεως εἰς ἐνιαῖον κείμενον τῶν περὶ Δημοτικῶν ..... ἱδρυμάτων ..... διατάξεων' (Ε.Φ. 121), οὔτε αἱ διατάξεις τοῦ 'Οργανισμοῦ τοῦ Τζαννείου Νοσοκομείου, κυρωθέντος διὰ τοῦ ἀπὸ 16/27 Σεπτεμβρίου 1946 βασ. διατάγματος ἐκδοθέντος κατ' ἐξουσιοδότησιν τοῦ ἄρθρου 34 τοῦ δ/τος τῆς 7 Μαΐου 1944, ἀποκλείουσι τοῦτο ἀπορριπτέου ἀποβαίνοντος τοῦ σχετικοῦ λόγου ἀκυρώσεως".

("Because of the fact that the administrative investigation, whereby the sub judice decision was issued, was carried out by Dr. A. Mantis, member of the staff of the hospital, no invalidity can be founded because neither the provisions of sections 25–47 of law 4548 of 1930 'for the state of municipal officers' —which regulate the disciplinary proceedings of municipal officers, nor the provisions of the from 17th May—8th June, 1944 order 'for the codification in a single text of the Municipal ..... institutions ..... provisions' (E.F. 121), nor the provisions of the Organization of the Jannion Hospital, ratified by the from 16/27 September, 1946 royal decree issued by authorization of section 34 of the order of 7th May, 1944, exclude this rendering the said ground for annulment unacceptable").

In case No. 426/65 it was held:

" Ἐπειδὴ καὶ ὁ λόγος ἀκυρώσεως, καθ' ὃν τοῦ Διοικητικοῦ Συμβουλίου τοῦ Νομαρχικοῦ Ταμείου μετέσχεν ὡς μετὰ ψήφου μέλος ὁ Δ/ντὴς τῶν Τεχνικῶν 'Υπηρεσιῶν τοῦ Νομοῦ, καίτοι οὗτος ἐξέδωσε τὴν περὶ ἐκπτώσεως πρᾶξιν, τοῦτο δ' ἀντιτίθεται εἰς γενικὴν τοῦ Διοικητικοῦ Δικαίου, 'Αρχὴν,

καθ' ἣν δὲν συνάδει πρὸς τοὺς κανόνας τῆς χρηστῆς Δ/νσεως νὰ συμπίπτουν ἐν τῷ αὐτῷ προσώπῳ αἱ ἰδιότητες τοῦ κρίνοντος καὶ τοῦ κρινομένου," τυγχάνει, ὡσαύτως, ἀπορριπτέος, ὡς ἀβάσιμος, διότι ἡ ἀνωτέρω ἀρχὴ δὲν δύναται νὰ τύχῃ ἐφαρμογῆς ὁσάκις τὸ ἐκδόσαν τὴν κρινομένην πρᾶξιν ὄργανον μετέχει ὡς ἁπλοῦν μέλος ἑτέρου πολυμελοῦς συλλογικοῦ ὀργάνου, ὅπερ μάλιστα δὲν ἀποφασίζει ἀλλ' ἁπλῶς γνωμοδοτεῖ ἐπὶ τῆς πράξεως ταύτης".

("Because the ground for annulment, whereby in the Board of the District Fund the Director of the Technical Services of the District participated as a voting member, although he issued the act for disqualification, this is contrary to the general principle of Administrative Law whereby it it is not in conformity with the principles of proper administration to coincide in the same person the properties of the one judging and the one being judged, is, therefore, untenable as groundless, because the above rule cannot be applied when the organ which issued the challenged act participates as a mere member of another multi-members collective organ which in fact does not decide but simply advises on the said act").

Also, in case No. 2115/65, it was held:

"Δὲν ὑφίσταται ὑποχρέωσις ἐκ γενικῆς τινὸς ἀρχῆς ὅπως τὰ συλλογικὰ ὄργανα ('Επιτροπαὶ 'Απαλλοτριώσεων), ἐπιλαμβάνωνται τῆς κατὰ νόμον ἀναθεωρήσεως τῶν ἀποφάσεων των ὑπὸ σύνθεσιν διάφορον ἐκείνης, ὑφ' ἣν ἐξέδοσαν τὴν ἀναθεωρουμένην πράξιν".

("There is no obligation from any general rule that collective organs (Acquisition committees), undertake the revision of their decision under the law under a different composition from that under which they issued the act under review").

I have already dealt with the evolution under the English Law, of the principle that "justice should not only be done, but should manifestly and undoubtedly seen to be done" as expounded in the *King* v. *Sussex Justices, ex parte McCarthy* and *R.* v. *Camborne Justices ex parte Pearse* (supra).

In *Leeson* v. *General Medical Council* [1889] 43 Ch. D. 366, the decision of the council was attacked on the ground

of bias. The medical practitioner had been held guilty of infamous conduct within sect. 29 because he had allowed himself to be cover to an unqualified person as if he were duly practising under the Act. The complaint of bias was grounded on the fact that of the twenty-nine persons who had held the inquiry, two were members of a body called the Medical Defence Union, one of the objects of which was to procecute and suppress unauthorised practitioners. The proceedings had been instituted by the Union, but these two members were not of its managing body. The court refused to interfere. It held (FRY, L.J., dissenting) that the two members had not such an interest in the matter in question as to disqualify them from acting.

In *Allinson* v. *General Council of Medical Council* [1894] 1 Q.B. 750, a Court of Appeal comprised of Lord Esher, M.R., and Lopes and Davey, L.JJ. agreed with the view of the majority in *Leeson's* case. Lord Esher, M.R. stated at p. 758:

> "But *Leeson's* case also decides that there are other relations to the matter of a person who is to be one of the Judges which may incapacitate him from acting as a Judge, and they held that the crucial question is, as Bowen, L.J., said, whether in substance and in fact one of the Judges has in truth also been an accuser. What is the meaning of that? The question is to be one of substance and fact in the particular case. That is the fact which has to be decided? If his relation is such that by no possibility he can be biassed, then it seems clear that there is no objection to his acting. The question is not, whether in fact he was or was not biassed. The Court cannot inquire into that. There is something between these two propositions. In the administration of justice, whether by a recognised legal Court or by persons who, although not a legal public Court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biassed. To use the language of Mellor, J., in *Reg* v. *Allan*, 4 B. & S. 915, at p. 926, 'It is highly desirable that justice should be admi-

nistered by persons who cannot be suspected of improper motives. I think that if you take that phrase literally it is somewhat too large, because I know of no case in which a man cannot be suspected. There are some people whose minds are so perverse that they will suspect without any ground whatever. The question of incapacity is to be one 'of substance and fact', and therefore it seems to me that the man's position must be such as that in substance and fact he cannot be suspected. Not that any perversely minded person cannot suspect him, but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biassed".

In *Cooper* v. *Wilson* [1937] 2 All E.R. 726, the plaintiff, a sergeant in the Liverpool city police force, brought an action against the chief constable, certain other members of the Liverpool city police force and the watch committee claiming, inter alia, that the hearing before the watch committee was invalid in that the chief constable who dismissed him from the police force after an inquiry and whose decision was the subject of an appeal to the watch committee was sitting together with the members of the Committee and remained with them after the evidence had been heard and the appellant and the other parties had withdrawn, while they were considering their decision. The chief constable at the commencement of the hearing read a statement of the case which he had prepared for the watch committee setting out the facts as found by him and concluded with the expression of his opinion that the watch committee after hearing the evidence would arrive at the same conclusion as himself. In the circumstances it was held by majority (Greer and Scott, L.JJ. consenting and Macnaghten, J. dissenting) that the hearing before the watch committee was conducted in a manner contrary to the principles of natural justice. Greer, L.J. had this to say in his judgment at page 734:

"When the plaintiff came into the presence of the watch committee to present his case in resisting confirmation of the chief constable's decision and asking for its reversal, he saw before him, seated at the table, opposite to where he would be giving his evidence, the deputy chairman, Mr. Alderman Eills, and, seated next to him, the chief constable, and, next to the chief constable, the deputy

chief constable, and, to any outsider who happened to come in with him, it would seem as if the chief constable and the deputy chief constable were placed in a position where they would act with the committee as judges of the police application for dismissal and of the plaintiff's appeal against the findings of the chief constable".

And at pages 735–736:

"But I think he is fairly entitled to complain that the presence on the bench, when they were deliberating as to whether they would or would not affirm his sentence, of one of the respondents to his appeal was contrary to natural justice, and that it thereby invalidated the decision of the watch committee, and entitled him to have a declaration to that effect.

I think the cases relied upon by Mr. Wooll, *R.* v. *Essex Justices, Ex p. Perkins*(1) *R.* v. *London County Council, Ex p. Akkersdyk, Ex p. Fermenia*(2) and *R.* v. *Brixton Income Tax Comrs.*(3), establish the proposition that, if the conduct of the justices is such as to give rise to a reasonable suspicion that justice does not seem to have been done, then their decision should be set aside.—

I ask myself what would anyone have thought who came into the room where the committee were sitting, after the plaintiff had gone out while they were considering their decision, and found, sitting on the bench with the committee, one of the respondents to the appeal, who had opened the case, though he had left the calling of the witnesses to Superintendent Hughes. Such a person, if reasonable, would have been likely to say to himself, 'There has been an opportunity here for one of the parties to influence the judgment of the committee, and it looks as if justice may seem not to have been done' ".

And Scott, L.J. at page 742:

"——— the risk that a respondent may influence the court

(1) [1927] 2 K.B., 475.
(2) [1892] 1 Q.B., 190
(3) [1913] 29 T.L.R. 712.

is so abhorrent to English notions of justice that the possibility of it, or even the appearance of such a possibility, is sufficient to deprive the decision of all judicial force, and to render it a nullity.

In my view, this action is open to the same objections as is the committee's conduct in allowing the chief constable, really the prosecutor, on the re-hearing, and respondent on the appeal, to sit on the bench with them, but in a more acute degree, as there was, from the appellant's point of view, secrecy, and the risk of bias through the tribunal seeing one party without the other being present. Some relevant aspects of such procedure were discussed by EVE, J., in his judgment in *Law* v. *Chartered Institute of Patent Agents*(1), although others did not arise in that case; but I agree with the general views of the learned judge in that case, and in particular with this passage on p. 290:

> 'A person who has a judicial duty to perform is disqualified from performing it if he has a bias which renders him otherwise than an impartial judge, or if he has so conducted himself in relation to the matters to be investigated as to create in the mind of a reasonable man a suspicion that he may have such a bias' ".

The principles set out in *Cooper's* case were applied in *Rex.* v. *Barnsley Metropolitan Borough Council* [1976] 3 All E.R. 452, where it was found that there was a breach of the rules of natural justice by local authority since the Committee had heard the market Manager's evidence in the absence of the applicant or his representative, and the market Manager, who was in the position of a prosecutor had been present at the deliberations of the Committee when it came to its decision.

In *Vrakas and Another* v. *The Republic* (1973) 2 C.L.R. 139 at pp. 155-165, there is a review of the relevant English case law on this subject. Reference is made, inter alia, to the following cases:

Franklin and Others v. *Minister of Town and Country Planning* [1947] 2 All E.R. 289, where Lord Thankerton defined "bias" as follows in delivering the judgment of the House of Lords (at page 296):

(1) [1919] 2 Ch. 267.

"I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute".

Metropolitan Properties Co. (F.G.C.) Ltd. v. *Lannon and Others* [1968] 3 All E.R. 304, where Lord Denning had this to say (at p. 310):

"Nevertheless, there must appear to be a real likelihood of bias. Surmise or conjecture is not enough: See *R.* v. *Camborne Justices, Ex Parte Pearce* [1954] 2 All E.R. 850; *R.* v. *Nailsworth Justices, Ex Parte Bird* [1953] 2 All E.R. 652".

And at page 158 of *Vrakas* case the judgment reads:

"In the *Nailsworth Justices* case, Lord Goddard C.J. after stressing that 'it is most important that justice should be seen to be done', observed (at p. 654):-

'Objection cannot be taken to everything which might raise a suspicion in somebody's mind—As Day, J., said in *R.* v. *Taylor etc. JJ. Laidler Ex p. Vogwill* (14 T.L.R. 185): 'anything at any time which could make fools suspect'. It is not something which raises doubt in somebody's mind that is enough to cause an order or a judgment of justices to be set aside. There must be something in the nature of real bias. The fact that a person has a proprietary or a pecuniary interest in the subject-matter before the Court which he does not disclose, has always been held to be enough to upset the decision of the Court, but merely that a justice may be thought to have formed some opinion beforehand is not, in my opinion, enough to do so".

And then it goes on at page 161 as follows:

"In *The Queen* v. *Sir Robert Carden*, 5 Q.B.D. 1, Cockburn

C.J., in dealing with the issue of the province of a magistrate before whom a person is brought, with a view to his being committed for trial or held to bail, said (at p. 6):-

> 'It is no part of his province to try the case. That being so, in my opinion, unless there is some further statutory duty imposed on the magistrate, the evidence before him must be confined to the question whether the case is such as ought to be sent for trial, and if he exceeds the limits of that inquiry, he transcends the bounds of his jurisdiction' ".

After reviewing the English case law in *Vrakas* case (supra) the Supreme Court in deciding one of the grounds of the appeal, related to the allegedly improper composition of the trial Court in circumstances making it to appear that justice could not be seen to be done in that one of the three Judges of the said Court was disqualified from sitting as a trial Judge, as he was the judge who had held the preliminary inquiry in such case and committed the accused for trial, had this to say at page 160 (per Triantafyllides, P.):

> "..... we do not think that their convictions should be set aside on this ground, because the functions of the Judge concerned at the preliminary inquiry and at the trial were distinctly different. In the former instance he did not have to evaluate the evidence as regards credibility (see section 94 of Cap. 155), whereas at the trial credibility was a primary consideration both for the purpose of deciding whether there had been made out a prima facie case by the prosecution (see section 74(1)(b) of Cap. 155 read in the light of *R.* v. *Kara Mehmed*, 16 C.L.R. 46, at p. 49) and for the purpose of deciding at the end of the trial whether the Appellants were guilty or innocent".

And at pages 164 and 165 the judgment concludes as follows:

> "It was held (in *Morgan* v. *Bowker* [1964] 1 Q.B. 507) that 'although the justices had come to a prima facie view when considering whether the articles should be the subject of proceedings under section 3(3) of the Obscene Publications Act, 1959, they were not determining the issue at that stage, so that there can be no valid objection to the

same justices hearing the summons when it was issued'. Lord Parker, C.J. said (at p. 515):-

> 'For my part, I feel that there is nothing whatsoever in this point, and I would go further and say that it is a point that ought never to have been taken. Justices must come to a prima facie view when the articles are brought before them, as these justices did. They are not determining the matter; they are merely deciding whether a summons should issue. It seems to me quite wrong to suggest that because they have taken a prima facie view, they are in some way biased or incapable of approaching with an open mind the hearing of the summons. I feel that there is nothing whatsoever in that objection'.

In the light of all the foregoing we think that the 'coram non judice' issue raised by counsel for the Appellants cannot be decided in their favour. In our opinion the participation in the trial of the Judge who held the preliminary inquiry cannot properly lead to the conclusion that any real likelihood of bias could be said to exist or that justice was not seen to be done, or even that it was undesirable for such a course to have been adopted; it is a well-known established practice in Cyprus for Judges who have committed persons for trial by an Assize Court to take part in the trial by such Assize Court, as Judges in the District Courts are relied on, due to their training, to be fully capable of keeping entirely separate in their minds the difference between the function of a Judge holding a preliminary inquiry and the function of a Judge trying a case".

The case of *Cooper* v. *Wilson* and other cases to similar effect are distinguishable from the present case. In the present case the General Manager was not sitting as a chairman of the First Instance Disciplinary Board on an appeal from his own decision but was sitting as a member of a collective organ which had in the first instance to hear the case and decide whether the applicant was guilty of the accusations against her. From such decision an appeal lied to an entirely differently composed collective organ, the Second Instance Disciplinary Board.

The fact that the General Manager acting in compliance with

the Personnel General Regulations found from the material put before him by the investigating officer that there was a prima facie case against the applicant to send her for trial before the First Instance Disciplinary Board, does not amount to a finding of guilt which had to be arrived at after hearing of evidence both from the prosecution and the applicant and after evaluating properly such evidence as regards credibility and weight. The prosecution in the present case was conducted by the Personnel Manager and not by the General Manager. I, therefore, find that there was no irregularity by the participation of the General Manager in the First Instance Disciplinary Board.

As to the other irregularities alleged by counsel as tending to prove that the General Manager was biased in that—

(a) once the audit roll was handed to him by the investigating officer, the General Manager was becoming a witness in the case;

(b) in the course of the hearing when reference was made to a book he said that "if you need this book we shall produce it", thus identifying himself with the prosecution;

(c) he had already decided about the guilt of the accused when drafting the charge and informing the applicant that there was prima facie case against her;

(d) he said to one of the employees that he was going to interdict the applicant;

(e) he was changing his rulings all the time. I shall deal briefly with them before concluding legal ground(l).

As to (a), the audit roll was handed to him together with all other material collected by the Investigating Officer. After the completion of the investigation, it did not come in his possession in the capacity of an investigating officer who might have to give any evidence connected with it. Independently of this, at no stage of the proceedings it was pointed out that the General Manager was a necessary witness in the case.

As to (c), I have already dealt with it earlier in my judgment.

As to (e), in view of the fact that the same matter is set out

as a separate ground of law (legal ground 6), I shall deal with it when I consider ground (6).

As to (b) and (d), such matters if taken as irregularities are not material irregularities of a substantial nature to affect the validity of the whole process before the Board, which was composed of five high officials of the respondent Authority of whom the General Manager was one. (See *Kyprianou* v. *The Republic* (supra) at p. 219 as to the effect of irregularities).

In the result, ground (1) fails.

Counsel for applicant did not advance any argument in respect of legal grounds (2) and (3). With reference to ground (2) I find that there is no substance in it as the decision by which the objection was overruled was taken after the Board heard what counsel had to say in support of same. As to ground (3) the alleged complaint of counsel for the applicant arose only on one occasion as it appears from the record of the proceedings which is before me. According to such record, counsel for applicant made a remark to the Chairman of the Board that when a decision had to be taken on an objection, such decision had to be taken by all the members, to which the Chairman observed: "I have overruled your objection after all other members of the Board have agreed" (see page 13 of exhibit 1). No comment was made by counsel to the observation of the chairman and no similar complaint was made by counsel on any other occasion in the course of the hearing at which quite a number of objections was raised. The observation of the Chairman as recorded, disposes of the complaint of counsel. But even if it did not, such irregularity is not so serious as to vitiate the proceedings.

I, therefore, find that legal grounds (2) and (3) fail.

I come now to ground (4). There is nothing in the record of the proceedings in support of the allegation that the President stated that it was expected from the applicant to prove that she was innocent in order to acquit her. Counsel for applicant in arguing the case before the Appellate Board advanced the same allegation which he prefaced as follows: "Before I proceed further, I wish to mention something which is not

appearing in the record and in respect of which I have to make an affidavit".

(See page 3 of the record of the Appellate Board, exhibit 3). No such affidavit was ever made and the Appellate Board very rightly did not take cognisance of this fact. The inclusion of this unfounded allegation in the grounds of law in the present case was superfluous, prejudicial and unnecessary, once there was no evidence to substantiate it. Therefore, I find ground (4) completely unfounded.

Legal ground (5) is two-legged, the one leg being that the charge was defective and not in compliance with the regulations, as a result of which the applicant was embarrassed in her defence as she was not aware of the facts of the case when defending herself and the other that the objection taken in that respect was left to be decided at the end of the trial. I shall deal first with the first leg of such objection.

Regulation 45(4) provides as follows:

> "In disciplinary proceedings all real facts constituting the offence charged and any existing elements of guilt should be defined".
>
> (" Εν τῇ πειθαρχικῇ ἀγωγῇ δέον νὰ ὁρίζωνται τὰ συνιστῶντα τὸ διωκόμενον ἀδίκημα πραγματικὰ περιστατικὰ ὡς καὶ τὰ ὑπάρχοντα στοιχεῖα ἐνοχῆς").

I am satisfied that the charge against the applicant was in compliance with regulation 45(4) in that all material facts alleged were set out in the charge. The complaint of the applicant that she was not aware of the real facts when defending herself, if unfounded, especially in view of the fact that a complete record of the evidence, intended to be adduced at the trial, was made available to her counsel before the commencement of the hearing and, therefore, both from the facts set out in the charge and the facts disclosed in such evidence she would be well acquainted with the case and prepare her defence. If any fact was sought to be established which was not within her knowledge from the material made available to her, there was nothing to prevent

her counsel to apply for an adjournment to consider the defence of the applicant. At no stage of the proceedings there was any such application by counsel for applicant.

I am coming now to the second leg of legal ground (5) by which it is alleged that the objection raised was left to be decided at the end of the trial. On this point, the following appear in the record of the proceedings (page 9 of exhibit 1) after the objection was raised:

"*Chairman*:– Judgment is reserved on the objection. Is there a matter for adjournment?

Poetis:– I have no objection if the other side applies for an amendment.

Markides:– The facts of each count will be testified by witness and the charge-sheet has been drafted in accordance with the Personnel General Regulations. The whole file of the case with all particulars of the accusations has been brought to her notice and in accordance with the Personnel General Regulation. This is the correct procedure to be followed.

Chairman:– Shall we be wasting our time?

Poetis:– No; if it is found in the end that he acted properly, then, surely the correct procedure was followed.

Chairman:– In the present case if your objections are sustained, you will simply waste your time. Let the case proceed.

Poetis:– Once this is the decision, I have no alternative but to proceed".

From the above one may infer that though decision on the objection was reserved, the objection was not persisted after the remarks made by the Chairman about delays and the state-

ment of counsel for applicant that he would proceed with the case. As a result, ground (5) fails.

Legal ground (6) concerns evidence as to previous conduct of the applicant which was admitted in the course of the hearing.

An objection was raised in this respect and the Board sustained such objection but later when the matter was brought up again, the Board reconsidered its position and found that it could accept such evidence for the reasons given in their decision as such evidence was sought to be put in to prove system or intention or the modus operandi under which the accused was acting at the material time.

It has been contended that there was a violation of regulation 46(4) which provides that the procedure must "in as far as possible be similar to the hearing of a criminal case tried summarily", in that inadmissible evidence was allowed to be given.

Regulation 46(4) should be read together with regulation 46(5)(c) and 46(6). Under regulation 46(5)(c) there is a complete departure from the rules of evidence applicable in criminal proceedings by allowing the admission of evidence which is not admissible in civil or criminal proceedings and under regulation 46(6) the Board is allowed before deliberation to rely not only on the evidence adduced at the hearing, but on any other evidence as well from other lawful source with the only restriction that the accused must be informed of such evidence.

The combined effect of regulations 46(4), 46(5)(c) and 46(6) is to secure a person charged with the commission of a disciplinary offence to know the charge against him, have a fair trial, to be represented at such trial by counsel of his choice, cross-examine the witnesses testifying against him, be allowed to give evidence and call witnesses in contradiction of the prosecution witnesses and in case the Disciplinary Board intends to take cognisance of any other evidence which was not called at the trial but came to the knowledge of the Board from other lawful sources he should be informed of such evidence. The decision of the Board should be duly reasoned so that the accused may know how the decision was reached and be in a position to contest the correctness of such decision on appeal. The fact should not escape the attention that such a Board consists of laymen and a layman at an inquiry of this kind is of course at a great disadvantage compared to a trained advocate or a properly composed Court of Law.

Before concluding on legal ground (6), I wish to observe that whereas when a case is tried before a Court of Law, civil or criminal, the rules of procedure and evidence have to be strictly complied with, there is no similar requirement for strict compliance with such rules at a hearing before a tribunal who is not a judge in the proper sense of the word. What is expected from such tribunal is to act in good faith, hear the case in a judicial spirit and in accordance with the principles of substantial justice. Where there are specific rules of procedure provided, such rules have to be followed.

I come now to grounds 8, 9, 10 which touch the weight of evidence and conviction on such evidence.

Counsel contended that on the material before it, the respondent 2 Board, could not find the accused guilty of the charges brought against her. It is well settled that an administrative Court in dealing with a recourse made against disciplinary conviction cannot, as a rule, interfere with the subjective evaluation of the relevant facts as made by the appropriate organ (see *Enotiadou* v. *The Republic*, (1971) 3 C.L.R. 409 at p. 415 in which reference is also made to the decision of the Council of State in Greece in cases 2654/1965 and 1129/1966. Also, *Kyprianou* v. *The Public Service Commission*, (1973) 3 C.L.R. 206 at pp. 222, 223).

In *Constantinou* v. *The Republic* (1969) 3 C.L.R. 190 at p. 207 the Court had this to say:

> "I would like to reiterate once again what has been said in a number of cases, that the evaluation of the evidence remains the province of the council, and that the Court, in reviewing the determination of the council, would not interfere if there was any evidence on which the council could reasonably have come to the conclusion to which they did. If, on the other hand, there was no evidence upon which they could reasonably have arrived at that conclusion or they have misconceived the effect of the facts before them, or they misdirected themselves on the question of the law, then their decision can be reviewed by this Court".

See also *Lefkos Georghiades* v. *The Republic* (1972) 3 C.L.R. 594 at p. 647.

On the basis of the material before me, I am quite satisfide

that the verdict that the applicant was guilty as charged, which was reached unanimously by the members of the respondent (2) Board, was reasonably open to it and cannot, and should not, be interfered with by this Court. The respondents did not act under a misconception of fact in reaching their verdict and the contention of counsel for applicant that the conviction was not warranted by the evidence, is untenable.

It is contended under ground 11 that the decision is a nullity as the applicant was found guilty on alternative counts. A perusal of the contents of the judgment on this point clearly shows that the accused was found guilty on all counts set out in the charge irrespective as to whether after the finding of guilt the Board proceeded on to state that the applicant was guilty both in respect of counts (1) and (2) and in the alternative of counts (3) and (4). The decision in this respect, reads as follows:

"Τὸ Συμβούλιον ἐξετάζον τὰς προσαφθείσας διὰ τοῦ κατηγορητηρίου κατηγορίας τῆς κατηγορουμένης παρατηρεῖ πὼς αὗται ὅλαι ἀναφέρονται εἰς πράξεις ποὺ ἀπάδουν πρὸς τὴν ὑπαλληλικὴν ἰδιότητα τῆς κατηγορουμένης καὶ τείνουν νὰ φέρουν ὑλικὴν ἢ ἠθικὴν ζημίαν εἰς τὴν 'Αρχὴν, διαζευκτικῶς δὲ ἀποτελούσας ἀτασθαλίας ἐν τῇ διαχειρίσει τῆς περιουσίας τῆς 'Αρχῆς καὶ συνιστώσας κατάχρησιν ὑπηρεσιακῆς ἐμπιστοσύνης. 'Εν ὀλίγοις τὸ Συμβούλιον ἐξευρίσκει πὼς διὰ τῆς ἀποδείξεως ὑπὸ τῆς κατηγορούσης ἀρχῆς τῶν ὡς ἄνω πράξεων τῆς κατηγορουμένης ἐπεδείχθη πλήρως ἡ ἐνοχὴ ταύτης εἰς ὅλας τὰς κατηγορίας ἤτοι τὰς ὑπ' ἀριθ. 1 καὶ 2 καὶ διαζευτικῶς 3 καὶ 4. 'Ως ἐκ τούτου εὑρίσκει ἔνοχον τὴν κατηγορουμένην ἀντιστοίχως καθ' ὅτι ἐπίστευσε πλήρως τοὺς μάρτυρας τῆς κατηγορίας, παρατηρεῖ δὲ πὼς ἡ προσπάθεια τῆς κατηγορουμένης νὰ ἀποδώση εἰς ἄλλα ἐλατήρια τὴν μαρτυρίαν τῶν κυρίων μαρτύρων κατηγορίας ἀπέτυχε ὁλοσχερῶς".

("The Council in examining the charges preferred by the charge sheet against the accused observes that all refer to acts which are unbecoming to accused's service status and tend to bring about material and moral damage to the Authority or alternatively constituting irregularities in administering the property of the Authority and constituting abuse of service confidence. In short the Council finds that by the proof by the prosecuting authority of the above acts of the accused her guilt has been fully proved

on all counts i.e. No. 1 and 2 and in the alternative 3 and 4. Therefore it finds the accused guilty respectively because it believed in toto the prosecution witnesses, and it observes that the attempt of the accused to attribute the testimony of the main prosecution witnesses to other motives failed entirely").

As I have said earlier in this judgment, it should not escape our attention that Disciplinary Boards of this type consisting of laymen who are at a grave disadvantage compared with trained lawyers are not expected to frame their decision in strict legal phraseology as it is expected from a Court of Law.

As to legal ground (14) I find that it cannot stand as the decisions both of respondent (2) Board and the Second Instance Disciplinary Board are properly and sufficiently reasoned as required under the established principles of administrative Law.

Grounds (12), (13) and (15) concern the sentence imposed upon the applicant. Nothing was said in support of these grounds of law by counsel for applicant in his long address before me, but once they have been set out in the application, I shall examine them briefly.

Ground (13) is drafted in such a vague way that one cannot understand what its object is. The fact that the Board "felt bound" to impose the sentence of dismissal is obvious from the decision. It felt so bound as explained in the decision due to the seriousness of the charge on which the applicant was found guilty. There is nothing showing that either the respondent (2) Board or the Appellate Board were not aware that there was a variety of sentences out of which they could select the most appropriate one in the circumstances of the case. The reasons why the sentence of dismissal which is the most serious one, was imposed, are sufficiently explained in the decision of the respondent (2) Board and such reasoning was adopted on appeal by the Second Instance Disciplinary Board. It was within the powers of both Boards to impose such sentence and nothing has been put forward to support that such sentence was manifestly excessive or that the discretion of the respondents in imposing such sentence was wrongly exercised.

The fact that the sentence was imposed on a date other than that on which applicant was found guilty, which, as alleged, vitiates the proceedings, is entirely unfounded. What happened

in this case, is that after applicant was found guilty, counsel addressed the Board in mitigation and the Board reserved its decision on sentence. There was nothing wrong in following such course and there was no contravention either of the Regulations or the procedure in criminal cases. Even a proper Court of Law trying a criminal case may, on occasions, reserve the imposition of sentence to a future date to have time to reflect on the sentence which is going to impose in the circumstances of a case.

In imposing sentence on the applicant the respondent (2) Board took into consideration whatever counsel for the applicant said in mitigation.

In the result, grounds (12), (13) and (15) fail.

The last ground, ground (16), is directed against the decision of the Appellate Board (The Second Instance Disciplinary Board).

Having in mind the proceedings on appeal as appearing in exhibit 3 and the decision of the Appellate Board (exhibit 4) which is duly reasoned, I am satisfied that the applicant was afforded every possible opportunity of arguing her case before such Board which patiently heard all arguments advanced by her counsel in support of the grounds of appeal, other than those abandoned by him at the hearing of the appeal. From the material before me I am satisfied that in reaching its decision to dismiss applicant's appeal, the Appellate Board acted judicially, in the spirit and within the sense of its responsibility, and after it had afforded the applicant the opportunity of adequately presenting her case in accordance with the Personnel General Regulations.

Grounds (1)-(15) refer to alleged irregularities before the respondent (2) Board which were the grounds of appeal before the Second Instance Disciplinary Board and were rejected by the latter. In my decision I have also rejected such grounds, as unfounded, therefore, I find that the decision of the Second Instance Disciplinary Board was properly reached and was duly reasoned. Ground (16) therefore, fails.

In his written address counsel for the applicant advanced an additional ground of law that the respondents acted in violation of regulation 45(5) of the Personnel General Regulations in that the case was sent to the Disciplinary Board first and then

communicated to the applicant and as a result, the applicant was not afforded the opportunity of giving an explanation or making a statement before the case was sent to the Disciplinary Board. Regulation 45(5) reads as follows:

" Ἡ πειθαρχικὴ ἀγωγὴ κοινοποιεῖται εἰς τὸν ἐγκαλούμενον, καὶ ἀκολούθως διαβιβάζεται μετὰ τοῦ σχηματισθέντος πειθαρχικοῦ φακέλλου ὡς καὶ ὁλοκλήρου τοῦ ἀτομικοῦ φακέλλου τοῦ ἐγκαλουμένου, εἰς τὸν γραμματέα τοῦ Πειθαρχικοῦ Συμβουλίου. Ὁ ἐγκαλούμενος δικαιοῦται νὰ λάβῃ γνῶσιν τοῦ πειθαρχικοῦ φακέλλου πρὸ τῆς συζητήσεως τῆς ὑποθέθέσεως εἴτε αὐτοπροσώπως εἴτε διὰ πληρεξουσίου ἢ τοῦ δικηγόρου του κατόπιν ἐγγράφου ἐξουσιοδοτήσεως, συνταξσομένης περὶ τούτου πράξεως, ἥτις ὑπογράφεται ὑπὸ τοῦ παρ' ᾧ εὕρηται ὁ φάκελλος ὑπαλλήλου καὶ τοῦ λαβόντος γνῶσιν, ἢ, ἐν ἀρνήσει τοῦ δευτέρου, ὑπὸ μόνου τοῦ πρώτου".

("The disciplinary action is notified to the accused and then transmitted with the formed disciplinary file as well as the complete personal file of the accused to the secretary of the Disciplinary Board. The accused is entitled to have knowledge of the disciplinary file before the discussion of the case either personally or by attorney or by his advocate by written authorization and an act is drawn up in this respect, which is signed by the officer in whose custody the file is found and by the person obtaining knowledge or, in case the second one refuses by the first one only").

This regulation must be read in conjunction with paragraph 6(a) of regulation 41 which sets out the procedure for instituting disciplinary proceedings. Regulation 41(6)(a) reads as follows:

" Ὁ Γενικὸς Διευθυντὴς μελετᾶ τὸ συγκεντρωθὲν ὑπὸ τοῦ ἐρευνήσαντος Λειτουργοῦ ὑλικὸν καὶ, ἐὰν κρίνῃ ὅτι διεπράχθη πειθαρχικὸν ἀδίκημα, διατυπώνει σχετικὴν κατηγορίαν καὶ παραπέμπει τὴν ὑπόθεσιν εἰς τὸ κατὰ τὴν κρίσιν του ἁρμόδιον νὰ ἐκδικάσῃ τὴν ὑπόθεσιν πειθαρχικὸν Ὄργανον καὶ κοινοποιεῖ ταῦτα εἰς τὸν περὶ οὗ πρόκειται ὑπάλληλον".

("The General Manager studies the material gathered by the investigating officer and, if he decides that a disciplinary offence has been committed, drafts the relative charge and sends the case to the appropriate, in his view, disciplinary organ to try the case and communicates same to the officer concerned").

The General Manager in informing the applicant by his letter of the 24th February, 1979 that the case had been referred to the Disciplinary Board, acted in compliance with the provisions of regulation 41(6)(a). The object of regulation 45(5) is to afford an accused person the opportunity of having available for perusal all the material which was in the file of the disciplinary proceedings before the hearing of the case and thus be able to prepare his defence accordingly. I find myself unable to agree with counsel for applicant that applicant was not afforded the opportunity of giving an explanation exculpating herself before the file was sent to the Disciplinary Board. The applicant was interviewed twice by the investigating officer before the investigation was completed by him and before the dossier was sent to the General Manager for further action and whatever she said appears in her statements which were included in the dossier of the case. Even if, as alleged, there was not strict compliance with regulation 45(5), in the circumstances of this case, I consider this as not amounting to such a violation of the rules which might have been treated as a breach of a mandatory nature, non-compliance with which might have embarrassed in any way the applicant or prejudiced her in her defence.

In *Georghiades* v. *The Republic* (1969) 3 C.L.R. 396, at p. 405, the Court had this to say regarding a submission that the disciplinary process had to be annulled as there was non-compliance with the regulations:

> "I find no merit in the submission that because the investigation was not completed within thirty days, the whole disciplinary process against the Applicant should be annulled as having not complied with the said regulation 2. In my opinion such regulation, which specifies a period of thirty days for the completion of the investigation, is not a provision which entails invalidity in case of non-compliance with it, but it is in the nature of a directive only (see, also, Conclusions from the Jurisprudence of the Greek Council of State (1929-1959) p. 105); any other interpretation of regulation 2 could lead to absurd results .....".

For all the above reasons, this recourse fails and is hereby dismissed, with no order for costs.

Application dismissed. No order as to costs.