1984 November 12

[L. LOIZOU, MALACHTOS, DEMETRIADES, LORIS, PIKIS, JJ.]

IOSIF PAYIATAS,

Appellant-Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondents.

(*Revisional Jurisdiction Appeal No.* 368).

Cyprus Ports Authority—Manager of—Initiation of disciplinary proceedings against—And interdiction of—Decided by the Council of Ministers—Competent organ under the Law being the Board of the Authority, initiation of disciplinary proceedings and interdiction wholly abortive—Set aside—Regulation 1 *of the First Table to the Public Service Law,* 1967 (*Law* 33/67) *applicable by virtue of regulation* 4(1) *of the Disciplinary Regulations,* 1982 *made under section* 19(2) *of the Cyprus Ports Authority Law,* 1973 (*Law* 38/73).

Cyprus Ports Authority Law, 1973 (*Law* 38/73)—*Disciplinary Regulations,* 1982 *made under section* 19(2) *of the Law—Regulation* 4(1) *ultra vires the said section* 19(2) *of the Law due to entrustment or delegation of disciplinary power to a body other than the Cyprus Ports Authority—And due to failure to provide for a hierarchical recourse—Offensive part of the said regulation cannot be severed from the remaining part of the regulation—Word "employee" in the said section* 19(2) *does not have a meaning other than that ascribed to the word by the definition of the word in section* 2 *of the Law—Said regulation* 4(1) *does not incorporate the provisions of section* 84 *of the Public Service Law,* 1967 (*Law* 33/67).

Interdiction—Not a punishment but a precautionary measure—It is not an incident of either "disciplinary responsibility" or "disciplinary prosecution".

Words and Phrases—"Disciplinary responsibility"—"Disciplinary prosecution".

Administrative Law—Administrative acts or decisions—Executory act—Decision to initiate disciplinary proceedings—Not in itself an executory act—While a decision to interdict is an executory act.

Practice—Revisional jurisdiction appeal—Revocation of sub judice act after the hearing of the appeal and before the issue of the reserved judgment in the appeal—Respondent's application for adjournment, made on the date fixed for the delivery of the reserved judgment, and for fixing a date for hearing argument whether the revocation had as a result the abatement of the appeal, refused.

The appellant has, at all times material to these proceedings, been the General Manager of the Cyprus Ports Authority ("the C.P.A."). Following accusations by the C.P.A. against the General Manager the Council of Ministers appointed an ad hoc Committee of inquiry to investigate into the accusations. The Committee in its report, which was submitted to the Minister of Communications and Works, found that the material before them supported, prima facie, a number of disciplinary charges against the appellant; and recommended the initiation of disciplinary proceedings against him on eleven accusations. After considering the matter the C.P.A. decided to "recommend to the Council of Ministers to cause the holding of an investigation on the basis of section 80(b) of the Public Service Laws as they apply by analogy"; and proceeded to invite the Council of Ministers to nominate the investigating officer in view of the rank of the appellant and the absence of any other officer of the Authority with a superior rank. The Council of Ministers, then, decided the initiation of disciplinary proceedings and appointed Mr. N. Charalambous, Senior Counsel of the Republic, to proceed with an investigation into the eleven charges earmarked by the Committee of Inquiry as meriting investigation; and proceeded, further, to order the interdiction of the appellant in the public interest. In taking these decisions the Council of Ministers claimed authority under the Disciplinary Regulations of 1982 ("the Regulations") which were made by the C.P.A. in exercise of its powers under section 19(2)* of the Cyprus Ports Authority Law, 1973 (Law 38/73). Regulation 4(1) of the Regulations purported to incorporate and

* Section 19(2) is quoted at pp. 1257-1258 post.

make applicable by way of disciplinary code for the personnel of the C.P.A., the provisions of section 73 to section 85 of the Public Service Law, 1967 (Law 33/67) and the tables attached thereto. Under this incorporation in the case of the General Manager, the Board of the C.P.A. would rank as "the appropriate authority" and the Council of Ministers would perform the functions assigned by Law 33/67 to the Public Service Commission. The trial Judge dismissed the recourse of the appellant against the decision sanctioning disciplinary proceedings and against the decision interdicting him; and hence this appeal. The trial Judge held that the first decision was a preparatory act and, as such, an act beyond the compass of review under Article 146.1 of the Constitution; and that regarding the decision interdicting appellant he held that, although of an executory character, it was one open to the Council of Ministers and could be validly taken in the public interest, in the light of the material before the respondents.

Following the hearing of the appeal judgment was reserved for the 12th November, 1984 and the parties were informed accordingly. On the 8th November, 1984, Counsel for the respondents addressed a letter to the Chief Registrar intimating that the Council of Ministers had, on that same day, terminated the interdiction of the appellant as well as disciplinary proceedings against him and that proceedings on appeal should in consequence be dismissed as having been deprived of their subject-matter.

When the Court of Appeal sat on the 12th November, 1984 for the purpose of delivering its reserved judgment in the appeal, Counsel for the respondent applied for an adjournment and for fixing a date for hearing argument whether the decision of the Council of Ministers dated 8th November, 1984, had as a result, the abatement of the appeal.

Counsel for the appellant mainly contended:

(1) That assuming that reg. 4(1) is intra vires the law, and, further assuming that it incorporated all the provisions of the Public Service Law, 1967 (Law 33/67) contained in sections 73-85, the decision was abortive because it was taken by a body other than the appropriate authority which was the board of the Cyprus Ports Authority.

(2) That the appropriate authority failed to hold a disciplinary inquiry on the basis of the complaint made, as provided in section 80 of Law 33/67, and thus the sub judice decision was founded on the report of a body having no authority in law.

(3) That regulation 4(1) was ultra vires the law generally, and particularly as it applied to the General Manager, for the following reasons:

(A) Entrustment or delegation of disciplinary power to a body other than the C.P.A., in contravention of the provisions of s.19(2)—Law 38/73.

(B) Introduction of a disciplinary code, other than that envisaged by s.19(2).

(C) Assumption of legislative power to introduce a disciplinary code for the General Manager, in defiance to the provisions of s.19(2), confining such power to the enactment of a code in relation to employees of the Authority other than the General Manager.

Regarding (B) above Counsel submitted that the Code introduced failed to make provision for a hierarchical recourse, thus resulting in a code other than the one the delegates of legislative power were empowered to enact.

(4) That, aside from the invalidity, regulation 4(1) conferred no power to interdict following disciplinary proceedings because it did not, in terms, incorporate the provisions of s.84 of Law 33/67 providing for interdiction but it only purported to incorporate the provisions of section 73 to section 85 of Law 33/67 in two respects.

(a) Disciplinary responsibility and

(b) Disciplinary prosecution.

Held, (1) that the powers of the Council of Ministers were confined to the appointment of the investigating officer (see proviso to reg. 1 of the first table to Law 33/67); and that, therefore, the decision to raise proceedings was taken by a body other than the "appropriate authority", that is the Board of the C.P.A. and, as such, it is vulnerable to be set aside as

ill founded; that, moreover, the Board of the C.P.A. was duty bound to direct an investigation upon receiving notice of the complaints (see the provisions of section 80 of Law 33/67); and that neither the Board of the C.P.A. nor the Council of Ministers for that matter, or the Minister of Communications and Works, had authority in law to submit the complaint to a preliminary examination or act in any manner other than that ordained by law; that the investigation was not founded on the complaints made but on the findings of a body unknown to the law; and that consequently, even if it were to be held that reg. 4(1) was validly made, and that it conferred power to interdict, another questionable proposition, this Court would be bound to hold, in the light of the above, that the initiation of disciplinary proceedings and every measure taken thereupon, including the interdiction, were wholly abortive and, as such, should be set aside.

(2)(a) That the entrustment or delegation, under regulation 4(1), of disciplinary power to a body other than the C.P.A. was made in contravention of the provisions of section 19(2) of Law 38/73; and that accordingly regulation 4(1) is ultra vires section 19(2) of Law 38/73 (pp. 1256-1257 post).

(2)(b) That there is no power to legitimise departure, in any direction, from the provisions and the framework of the enabling law; that, consequently, failure to provide for a hierarchical recourse, strikes at the core of the legitimacy of the code enacted, being, in the end, a code other than that contemplated by the legislature; that, therefore, the code enacted was ultra vires the law and stillborn; and that, accordingly, the proceedings against the appellant, founded on the abortive code, leading to his interdiction, were misinitiated and legally invalid.

Held, further, that though in appropriate cases unauthorised or miscarried parts of subsidiary legislation may be severable from the remaining body of the law if, after dismemberment, the fabric of the law is not destroyed and the Regulations retain a reasonable degree of comprehensiveness, by the expurgation of the offensive part of the Regulations, in the instant case, the code is mutilated to a degree that cannot stand the test of severance.

(2)(c) That the word "employee" in section 19(2) of Law 38/73 does not have a meaning other than that ascribed to the word by the definition of the word in section 2 of the Law.

(3) That interdiction is not an incident of either "disciplinary responsibility" or "disciplinary prosecution"; disciplinary responsibility encompasses every obligation to abide by and observed a code of conduct, whereas disciplinary prosecution embraces every procedural step relevant to the initiation and conduct of disciplinary proceedings; that interdiction is an administrative measure independent of, though related to, a disciplinary prosecution; that interdiction is not a punishment but a precautionary measure that may be taken in the interests of the efficacy of the service; and that, consequently, reg. 4(1) did not incorporate the provisions of s.84 and, this is an additional reason for annulling the decision to interdict the appellant.

Held, further, (1) that this Court is in agreement with the decision of the trial Judge that the decision to initiate disciplinary proceedings was not in itself an executory act, while a decision to interdict is, on principle and authority an executory act, albeit one closely associated with the initiation of disciplinary proceedings.

(2) *With regard to the application for adjournment:* That unless there is an application by the appellant to withdraw or abandon the appeal this Court considers itself duty bound to proceed with the delivery of the judgment; and at this late stage, and as the appellant wants to have the judgment of this Court, it is not proper to grant an adjournment for the purposes applied for.

Appeal allowed.

Cases referred to:

Republic v. *Louca and Others* (1984) 3 C.L.R. 241;

Kittou and Others v. *Republic* (1983) 3 C.L.R. 606;

Christodoulides v. *Republic* (1978) 3 C.L.R. 193;

Ratnakopal v. *Attorney-General* [1970] A.C. 954;

Police v. *Hondrou*, 3 R.S.C.C. 82;

Marangos & Others v. *Municipal Committee of Famagusta* (1970) 3 C.L.R. 7;

Spyrou and Others (No. 2) v. *Republic* (1973) 3 C.L.R. 627,

Michaeloudes and Another v. *Republic* (1979) 3 C.L.R. 56;

Malachtou v. *Attorney-General* (1981) 1 C.L.R. 543;

Ploussiou v. *Central Bank of Cyprus* (1983) 3 C.L.R. 398;

Newberry D.C. v. *Secretary of State* [1980] 1 All E.R. 731 (H.L.);

Veis and Another v. *Republic* (1979) 3 C.L.R. 390 at p 412;

Grigoropoulos v. *Republic* (1984) 3 C.L.R. 449;

Azinas v. *Republic* (1980) 3 C.L.R. 510 at p. 521.

Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Savvides, J.) given on the 2nd February, 1984 (Revisional Jurisdiction Case No. 306/83)* whereby appellant's recourse against his interdiction was dismissed.

K. Michaelides with *A.S. Angelides*, for the appellant.

R. Gavrielides, Senior Counsel of the Republic with *M. Tsiappa* (*Mrs.*), for the respondents.

Cur. adv. vult.

L. Loizou J.: The hearing of this appeal was concluded on the 23rd October, 1984 and judgment was reserved. On the 6th November, the parties were informed that judgment would be delivered today, the 12th November at 9.30 a.m.

On Thursday, the 8th November, 1984, counsel for the respondents addressed a letter to the Chief Registrar intimating that the Council of Ministers had, on that same day, terminated the interdiction of the appellant as well as disciplinary proceedings against him and that proceedings on appeal should in consequence be dismissed as having been deprived of their subject-matter.

* Reported in (1984) 3 C.L.R. 165.

Unless we have an application by the appellant to withdraw or abandon the appeal we consider ourselves duty bound to proceed with the delivery of the judgment.

Mr. Michaelides: The appellant wants to have the judgment of this Court.

Mr. Gavrielides: I apply for an adjournment and for fixing a date for hearing argument whether the decision of the Council of Ministers dated 8th November, 1984, has as a result the abatement of this appeal.

L. Loizou J.: But we have your written representations Mr. Gavrielides which we have, naturally, considered and we have just expressed our views on such representations.

We are unanimously of opinion that at this late stage it is not proper to grant an adjournment for the purposes applied for.

In so far as discontinuance of an appeal may be allowed at the instance of an appellant useful reference may be made to the case of *The President Republic* v. *Louca & Others* (1984) 3 C.L.R. 241, whilst the cases of *Kittou & Others* v. *The Republic* (1983) 3 C.L.R. 606 and *Christodoulides* v. *The Republic* (1978) 3 C.L.R. 193 set out the principles bearing on the right of an applicant to have a judicial pronouncement on his recourse notwithstanding revocation of the sub judice act or decision.

L. Loizou J.: The judgment of the Court will be delivered by Pikis, J.

Pikis J.: On 1st July, 1983, the Council of Ministers decided to initiate disciplinary proceedings or implement a decision of the Cyprus Ports Authority (C.P.A.), for the conduct of a disciplinary investigation into charges against the appellant, the general manager of the Authority. Following the decision for disciplinary action, they ordered the interdiction of the appellant on grounds of public interest. By the proceedings under review, the appellant challenged both decisions, he sought, firstly, the annulment of his interdiction and, secondly, eradication of the decision sanctioning disciplinary proceedings. The trial Court dismissed both prayers; the second, that is the prayer for discharge of the decision to raise disciplinary proceedings as directed against a non justiciable act and, the

first, viz. the decision to interdict him, as unmerited by the facts before the Court. The decision to hold an investigation was found to be a preparatory act and, as such, an act beyond the compass of review under Article 146.1 of the Constitution. It was a decision that had no noticeable consequences in law on the status and rights of the appellant. The decision to interdict him, on the other hand, although of an executory character, was one open to the Council of Ministers and could be validly taken in the public interest, in the light of the material before the respondents.

The Regulations* on the basis of which disciplinary proceedings were initiated, challenged by appellant as ultra-vires the law, were found to be intra-vires the law, namely s.19(2) of the Cyprus Ports Authority Law, Law 38/73, and correctly invoked and applied in the circumstances of the case.

The initiation of disciplinary proceedings against the appellant, was the culmination point of a long and bitter dispute between the appellant and the Board of the C.P.A. The ex chairman of the Authority, Mr. Stavros Galatariotis, took an active part, in pressing the accusations of the Board against the appellant. In fact, he demanded his removal long before. On 25th April, 1980, Mr. Galatariotis, apparently acting in the belief this was possible in law, addressed a letter to the then Minister of Communications and Works, requesting him to take the necessary steps for the removal of the appellant, asking, in effect, for his dismissal. Of course, the Minister had no such power and took no steps in the direction suggested. The Minister sought, no doubt in the interests of fairness, the views of the appellant, surely in order to afford him an opportunity to reply to the accusations levelled against him. What followed, constituted, in the submission of counsel for the appellant a diversion from the course ordained by law, that vitiated the decision of 1.7.1983 and rendered it wholly abortive, because, allegedly, the Council of Ministers acted in excess and abuse of its powers.

To appreciate the issues arising for resolution, and evaluate them in their proper context, we must refer to the events that followed, in some detail. In the process, we shall, to the extent

* Cyprus Ports Authority Regulations, 1982 gazetted on 30.12.1982, under Notification 317/82.

necessary for our decision, comment on the implications of salient facts and indicate their effect in law.

Faced with the accusations of the C.P.A. against the general manager, and those of the general manager against the chairman and members of the Board elicited in his response to the letter of Mr. Galatariotis, dated 25.6.1980, the Minister invited from the parties a detailed statement in support of their accusations. The action of the Minister was apparently taken in exercise of his powers of supervision over the C.P.A., conferred by s.14 of the law, Law 38/73. In his letter of 25th June, 1980, the appellant accused the Board or members of it, of misuse and abuse of power. Mr. Galatariotis detailed his accusations against the appellant in a long letter dated 30.6.1980, running to about twenty typed pages, accusing the appellant of—

(a) Insubordination,

(b) default and neglect of duty,

(c) favouratism and patronage and,

(d) lack of probity.

Also, he called into question the competence of the appellant to perform the duties of a general manager. Many of the accusations were detailed and specific.

Thereafter, the Minister invited the opinion of the Attorney-General on what ought to be done. The Attorney-General advised* that a committee of inquiry be set up by the Minister in exercise of his powers under s.14(2) of the law, to look into the accusations and counter-accusations and, generally, inquire into the state of affairs at the C.P.A. Section 14(2) confers power on the Minister to set up, with the approval of the Council of Ministers, a commission of inquiry to investigate specific subjects in relation to the C.P.A. A committee, set up under s.14(2) is, in virtue of the provisions of sub-section 3 of s.14, a body akin with a commission of inquiry functioning under Cap. 44. It is invested with similar powers and operates under identical conditions. In his advice the Attorney-General intimated that he failed to identify specific disciplinary accusations, but, added, his view in this respect was not the result

* By a written opinion dated 16.7.1980.

of a thorough study of the papers submitted, but an impression gained from a cursory perusal of the documents. Finally, the Attorney-General noted, the question of competence of the general manager to perform his duties, was a question of fact and should be faced as such.

The Council of Ministers adopted, on July 24, 1980, a submission of the Minister fashioned to the suggestions of the Attorney-General, and approved the setting up of a commission of inquiry under s.44(2), nominating Mr. Loucaides, theDeputy Attorney-General, and Mr. Anastassiades, the head of the Personnel Department of Public Administration, as members of the commission. The terms of reference of the commission were broad enough to empower it to hold a thorough inquiry into the state of affairs at the C.P.A. and evaluate specific complaints made against the general manager and the chairman and members of the Board. By the decision of the Council of Ministers, the Minister was authorised to set up a commission of inquiry in accordance with the provisions of s.44(2).

Notwithstanding the above decision, the Minister refrained from or omitted to set up a commission of inquiry. Instead, the Minister or his subordinates sought new advice from the Attorney-General aimed to elicit whether it was possible in law to pursue an alternative procedure to a commission of inquiry under s.44(2) as a means of inquiring into the whole matter. In response, the Attorney-General advised the Minister was not bound to set up a committee under the provisions of s.14(2), intimating it was open to the Minister to set up in its stead an ad hoc commission of inquiry with similar terms of reference to those approved on 24.7.1980. Unlike a committee set up under s.14(2), the Attorney-General pointed out the ad hoc committee would be established as an administrative measure to aid the Administration in its pursuits. It is, with respect, questionable whether the Minister possessed in law the power to set up the alternative committee suggested by the Attorney-General or take, in relation to the C.P.A. by way of inquiry into its affairs, any measure other than that provided for in s.14(2). Certainly, the Minister had no residual powers in relation to the C.P.A. or, in fact, any powers other than those expressly conferred by the provisions of s.14. Those powers prescribed the avenue open to the Minister to hold an inquiry

into the affairs of the Authority, an avenue signposted by s.14(2). Certainly, a Court of law will be slow to acknowledge power to do something in a manner other than that specifically prescribed by the law. It is unnecessary to probe the issue further for, as it will appear from what is said hereafter, more fundamental questions still pose in relation to the validity and propriety of the proceedings that followed. The changed approach of the Ministry of Communications and Works to the inquiry in the matters under review, was duly reflected in a new submission to the Council of Ministers, inviting substitution of the decision of 24.7.1980 with a new decision doing away with a staturory committee of inquiry, sanctioning in its place an ad hoc committee of inquiry. The new submission also suggested a change in its terms of reference, shifting the emphasis to the investigation of the accusations against the general manager. The proposal was carried by majority*; the Minister of Education recorded his dissent, explaining there were no valid reasons for the substitution of the first decision. The composition of the committee was left unchanged.

It took the committee of inquiry some time** to report on its findings. It was by no means a conclusive report. It was termed an "interim report" and in fact raised as many questions as it answered. They pointed out with justification that the accusations against the appellant were of a disciplinary nature and might best be inquired into in the context of a disciplinary investigation. On the other hand, they queried the need of holding an inquiry into the conduct of the affairs of the Board of the C.P.A., in view of the changes that took place, in the meantime, in the membership of the Board. They pointed out that proper consideration of the charges against the appellant necessitated their limitation in the interests of coherence and fairness. In effect, the committee invited a change in its terms of reference.

The Minister made a new submission to the Council on 2.12. 1981, founded on the report of the committee, recommending confinement of the inquiry to investigation of disciplinary accusations against the appellant. The Council of Ministers

* The decision was taken on 31.7.1981.
** It was delivered on 29.10.1981.

took a new decision, on 10.12.1981, modifying the terms of reference of the committee of inquiry, in a manner requiring them to concentrate, in the first place, on examination of the accusations against the appellant. This aspect of their inquiry should be divorced from the inquiry into the affairs of the C.P.A., an inquiry that should be conducted independently along the guidelines furnished in the decision.

By a letter dated 30.6.1982, the members of the committee of inquiry made further suggestions for the specification of their terms of reference, reminding of the need to specify the charges to be investigated against the appellant. They suggested the establishment of a separate committee of inquiry, to be set up under s.14(2), to look into the affairs of the C.P.A.

By yet another decision taken on 29.7.1982, the Council of Ministers made further modifications in the terms of reference of the ad hoc committee of inquiry, changing in effect its character into a committee of investigation into the accusations against the appellant.

The committee of inquiry submitted its final report on 7.3.1983. It is a voluminous and fairly well considered document. It may be summarised as follows:

While it absolved the appellant of every suggestion of dishonesty, they found that the material before them supported, prima facie, a number of disciplinary charges against him which, viewed in conjunction, gave rise to a serious case against the appellant. And the initiation of disciplinary proceedings against the appellant on eleven accusations was recommended.

As counsel for the Republic acknowledged, if the committee of inquiry had functioned under s.14(2), its deliberations and conclusions would have had no noticeable effect in law because of the vagueness with which its terms of reference were defined, and the extent to which the committee was allowed to elicit the terms and scope of the inquiry*. If a committee of inquiry is allowed to establish its terms of reference and become, to any extent, the arbiters of what should be inquired into, they assume powers that do not belong to them but to the body

* *Ratnakopal* v. *The Attorney-General* [1970] A.C. 954 (P.C.)

authorised to set up the commission. Any relinquishment of such power, on the part of the latter, is an act ultra-vires the law. The principle is that the powers that may be legitimately delegated to a committee of inquiry, must be solely connected with the inquiry to be conducted. The scope of this inquiry is the exclusive province of those vested with authority to direct an inquiry.

The final report of the committee of inquiry was submitted to the Minister who, in turn, placed it before the Council of Ministers who referred it in due course to the C.P.A. for consideration. The Authority, after considering the report at two successive meetings, took a decision, the effect of which was the subject of rival arguments. Evidently, the Board of the C.P.A. favoured investigation into the accusations against the general manager. What is at issue, is whether they took a decision to initiate the investigatory process, or left the final decision on the matter to the Council of Ministers. It is, therefore, necessary to scrutinize the operative part of their decision, couched in these terms:-

> " εἰσηγηθῆ εἰς τὸ 'Υπουργικὸ Συμβούλιο ὅπως προκαλέση τὴν διεξαγωγὴν ἔρευνας μὲ βάση τὸ ἄρθρον 80(β) τῶν Περὶ Δημοσίας 'Υπηρεσίας Νόμων σὲ ἀνάλογη ἐφαρμογὴ του".

(Translated in English)—

> "____recommend to the Council of Ministers to cause the holding of an investigation on the basis of s.80(b) of the Public Service Laws as they apply by analogy".

The C.P.A. invited, it must be added, the Council of Ministers to nominate the investigating officer in view of the rank of the appellant and the absence of any other officer of the Authority with a superior rank.

Counsel for the Republic invited us to hold that the deliberations of the Board of the C.P.A., viewed in their entirety, contained a positive decision to initiate disciplinary proceedings, merely leaving the appointment of an investigating officer to the Council of Ministers. For the appellant it was contended that on no fair construction of the operative part of the decision could we identify anything other than a recommendation to the

Council of Ministers, albeit in strong terms, to initiate disciplinary proceedings. After due consideration of the decision and reflection on the opposing views, we are of opinion the submission of counsel for the appellant is sound. The words in the passage quoted in the previous page "——— to cause the holding of an investigation———", are highly, if not solely consistent with the absence of a positive decision on the part of the C.P.A. to hold an investigation. In our judgment, the C.P.A. left final decision with the Council of Ministers who considered the matter at its meeting of 1st July, 1983.

The Council of Ministers decided the initiation of disciplinary proceedings and appointed Mr. N. Charalambous, Senior Counsel of the Republic, to proceed with an investigation into the eleven charges earmarked by the committee of inquiry as meriting investigation. The confinement of the investigation to the eleven charges by the Council of Ministers, reinforces the view that the decision to hold an investigation emanated from the Council of Ministers. For, in their decision, the C.P.A. suggested no such limitation of the investigation. Having directed disciplinary action the Council of Ministers ordered the interdiction of the appellant in the public interest.

In taking the decisions complained of, the Council of Ministers claimed authority under the Disciplinary Regulations of 1982, hereafter referred to as "The Regulations". Reg. 4(1) purports to incorporate, and make applicable by way of a disciplinary code for the personnel of the Authority, the provisions of s.73 to s.85 of the Public Service Law, and the tables attached thereto. In other words, the code of discipline applicable to civil servants, with this modification: In the case of the general manager, the Board of the C.P.A. would rank as "the appropriate authority", and the Council of Ministers would perform the functions assigned by Law 33/67 to the Public Service Commission.

The first complaint of the appellant is this:

Assuming that reg. 4(1) is intra-vires the law and, further assuming that it incorporated all the provisions of Law 33/67 contained in s.73 to s.85, the decision was abortive because it was taken by a body other than that specified by the law, notably s.80, that is, by a body other than the appropriate authority which was the Board of the C.P.A. Another submission asso-

ciated with the above, pertaining to the validity of the decision to initiate proceedings, refers to the failure of the appropriate authority to hold a disciplinary inquiry on the basis of the complaint made, as provided in s.80, and founding the decision on the report of a body having no authority in law.

It emerges from the analysis of the facts that the decision to raise proceedings was taken by a body other than the "appropriate authority", that is the Board of the C.P.A. and, as such, it is vulnerable to be set aside as ill founded. In accordance with the proviso to reg. 1 of the first table to Law 33/67, the powers of the Council of Ministers are confined to the appointment of the investigating officer. Moreover, consideration of the provisions of s.80 of Law 33/67 leads to the conclusion that the Board of the C.P.A. was dutybound to direct an investigation upon receiving notice of the complaints, complaints which, in this case, actually stemmed from the Board and its members. Neither the Board of the C.P.A. nor the Council of Ministers for that matter, or the Minister of Communications and Works, had authority in law to submit the complaint to a preliminary examination or act in any manner other than that ordained by law. The procedure sanctioned by the second able to Law 33/67, is designed to ensure a speedy investigation n the interests of the service and the officer concerned. Reg. 2 equires that the investigation be held the soonest and that it hould be completed within thirty days, an important safeguard or the rights of the officer against whom the complaint is made. Ve noticed what happened in this case; a period of three years 'apsed before an investigation was ordered. An investigation unded, in the end, not on the complaints made, but on the ndings of a body unknown to the law. Consequently, even we were to hold that reg. 4(1) was validly made, and that it nferred power to interdict, another questionable proposition, e would be bound to hold, in the light of the above, that the itiation of disciplinary proceedings and every measure taken ereupon, including the interdiction, were wholly abortive nd, as such, should be set aside. But there are other, still ore consequential reasons for which we must declare the ecision invalid.

It has been submitted that reg. 4(1) is ultra-vires the law enerally, and particularly in so far as it applies to the general

manager, for a number of reasons that justify separately and, more so, cumulatively its expurgation. Reproducing these reasons as compendiously as we can, they are, in order of importance, the following:-

(A) Entrustment or delegation of disciplinary power to a body other. than the C.P.A., in contravention of the provisions of s.19(2)—Law 38/73.

(B) Introduction of a disciplinary code, other than that envisaged by s.19(2). The submission here is that the code introduced failed to make provision for a hierarchical recourse, resulting in a code other than the one the delegates of legislative power were empowered to enact.

(C) Assumption of legislative power to introduce a disciplinary code for the general manager, in defiance to the provisions of s.19(2), confining such power to the enactment of a code in relation to employees of the Authority other than the general manager.

It is the weakest point of the case for the appellant, and raises arguments that may conveniently be disposed of at this juncture. The submission rests on the assumption that the word "employees" in s.19(2) of the law has a meaning other than that ascribed to the word by the definition of the word in s.2 of the law. Whereas the word "employee" includes, in accordance with the definition given in s.2, the general manager, unless a contrary intention appears, we were asked to construe the same word in s.19(2) as bearing a different meaning, that is, as encompassing all employees of the C.P.A. other than the general manager. The provisions of the preceding sub-section in particular, that is s.19(1), and those of s.18, modify the meaning of "employee" in the context of s.19(2). We are unable to sustain this submission.

Nothing in either of the aforementioned provisions of the law aims to modify the meaning of "employee" in s.19(2). They regulate matters other than the discipline of personnel. Only in the face of a compelling indication to the contrary should a Court of law depart from the meaning attached by the legislature to a particular word. Therefore, we shall concern

ourselves no further with this submission of appellant, groundless in our view.

Examination of the legality of the Regulations of 1982 requires us, in the first place, to examine the nature and ambit of the rulemaking power entrusted to the C.P.A. The first question to be answered defined under 'A' above is, whether it was competent for the "delegatus" of legislative power to provide for the exercise of disciplinary power over employees of the Authority to any body other than the C.P.A. or organs of it. In the submission of appellant, it was impermissible to assign the exercise of disciplinary functions to any body or organ outside the Authority itself.

Discipline of personnel of public corporations is ordinarily a domestic matter—an incident of its autonomy. Exercise of disciplinary power over personnel of the Authority by an outside agency is, no doubt, a means of control over its domestic affairs. For such control, there must be specific legislative sanction. Under the provisions of Law 38/73 the C.P.A. is an independent public corporation with a legal personality of its own—s.4(1) of the law. The power of the Minister to issue directions in matters of policy, in the manner specified in s.14(1), does not subordinate the C.P.A. to the Minister or any other authority. Certainly, it does not diminish its autonomy in matters of administration and discipline of personnel. Similarly, the powers vested in the Council of Ministers in relation to the appointment and dismissal of the general manager, specifically limited to the areas listed by the law, do not subordinate the C.P.A. to the Council of Ministers in any general sense; nor do they confer power on the Council of Ministers to assume a competence other than the one specifically conferred by s.18 of the law. In our opinion, there is nothing in the law to suggest that discipline of personnel should be anything other than a domestic matter for the Authority. This view is reinforced by the provisions of s.18(2) making the dismissal of the general manager subject to the approval of the Council of Ministers. Clearly, the law contemplates that dismissal should be the province of a body other than the Council of Ministers and, in particular, the C.P.A. This part of the law would be neutralised if power vested under any guise in the Council of Ministers to dismiss the general manager for the commission of a disciplinary offence.

The subjects within the purview of s.19(2) are, par excellence, of an internal character and, as such, within the competence of the C.P.A. If it was competent under the law to assign disciplinary power to an external body, it would, by the same logic and authority, be possible to assign every other matter specified therein to an outside body, for example, promotions. Such was not the intention of the law, and nothing stated in s.19(2) compels us to hold otherwise. The legislative power delegated to the C.P.A. to enact, with the approval of the Council of Ministers, rules for the exercise of disciplinary jurisdiction over employees, bound the rule-makers to provide for the regulation of discipline as an internal matter of the C.P.A.

The second submission earmarked under 'B' above, raises a totally different question—whether the rules accord with legislative norms as to the disciplinary code. Indisputably, the Regulations enacted make no provision for a hierarchical recourse and to that extent they are in discord with the provisions of s.19(2). Moreover, having regard to the status of the organ to which disciplinary jurisdiction was entrusted in the case of the general manager, that is the Council of Ministers, it can be predicated that it was intended to rule out hierarchical review as an attribute of the disciplinary process.

Counsel for the Republic acknowledged the inexistence of a two-tier system of disciplinary justice, but argued that the provisions of s.19(2) with regard to hierarchical recourse were not mandatory but merely directory; they could be ignored at the discretion of the delegates of legislative power. He pressed, albeit with less conviction, another argument that omission to provide for a hierarchical recourse, if a defect in the code, it can be remedied at any future time by the amendment of the rules. Surely, that is no answer to the question in hand for, if the code is defective, because of failure to heed legislative command, it cannot survive the test of non compliance by speculating about future legislative intents of the "delegatus" of legislative power.

It is appropriate to cite the relevant provisions of s.19(2) in order to ascertain their effect:-

> "—πειθαρχίας ὡς καὶ τοῦ δικαιώματος ἱεραρχικῆς προσφυγῆς ἐν περιπτώσει ἀπολύσεως ἢ λήψεως ἑτέρων πειθαρχικῶν μέτρων".

(Translated in English)—

"_____discipline as well as provide for a right of a hierarchical recourse in the event of dismissal or imposition of other disciplinary measures".

Manifestly, the legislature tied the exercise of discipline over employees with the existence of a right to a hierarchical recourse as an indispensable feature of the disciplinary process. The legislature left no discretion to those to whom it entrusted power to implement its will in this area to fashion the disciplinary code in any other manner. The legislature stipulated the existence of a second tier of disciplinary justice as a fundamental attribute of the process. The existence of a two-tier system of administrative justice is not a matter of mere formality but a substantial consideration that affects the nature of the jurisdiction, as well as the rights of those subject to discipline. Institutionalisation of a second level of administrative justice is geared to provide checks against abuse and excess of power and mechanism for the avoidance of mistakes.

It emerges that the code introduced by reg. 4(1) failed to make provision for a hierarchical recourse and to that extent failed to implement the will of the legislature with regard to the nature and ambit of the code to be introduced. The end product, that is the code introduced, was a code other than the one contemplated by the legislature.

Counsel for the Republic argued that the defects and shortcomings of the code adopted, are not fatal to its validity. The code passes, in his submission, the test of legality and is enforceable notwithstanding non implementation of legislative will in the areas noticed above.

A strong body of English and Cyprus caselaw requires that subsidiary legislation does conform strictly to the provisions of the enabling law. The framework set by the enabling law must be observed as a condition of its validity. The vestees of subsidiary legislative power cannot assume power to legislate, except in accordance with the law and subject to its provisions. Deviation therefrom cannot be faced as anything other than an unauthorised act that lacks the force of law. Of course, in appropriate cases unauthorised or miscarried parts of sub-

sidiary legislation may be severable from the remaining body of the law but, as it has been held, severance can only be sanctioned if, after dismemberment, the fabric of the law is not destroyed and the Regulations retain a reasonable degree of comprehensiveness*. Where the Regulations enacted introduce a scheme opposed to that envisaged by the enabling law, it must be rare indeed for the end product to be reconciled with the law and be sustained as a viable piece of legislation. Certainly, this is not the case with reg. 4(1) presently under consideration.

The Rules that reg. 4(1) purported to adopt, as far as applicable to the general manager, if stripped of that part providing for mechanism for the trial of disciplinary offences, would become a limbless body falling short of the code envisaged by the legislature. By the expurgation of the offensive part of the Rules, the code is mutilated to a degree that cannot stand the test of severance. The fabric of the subsidiary legislation is torn to pieces.

In relation to the submission outlined under 'B' above, no question of severance arises for, we are concerned with a wholly different question. It is this:

Can we uphold a system of administrative justice introduced by subsidiary legislation, other than that contemplated by the enabling law?

The answer must plainly be in the negative. There is no power to legitimise departure, in any direction, from the provisions and the framework of the enabling law. Consequently, failure to provide for a hierarchical recourse, strikes at the core of th legitimacy of the code enacted, being, in the end, a code other than that contemplated by the legislature.

In our judgment, the code enacted was, for the reasons above given, ultra-vires the law and stillborn. Consequently, the proceedings against the appellant, founded on the abortive

* See, *Police* v. *Hondrou*, 3 R.S.C.C., 82; *Demetrios Marangos And Others* v. *Municipal Committee of Famagusta* (1970) 3 C.L.R. 7; *Savvas Chr. Spyrou And Others (No. 2)* v. *The Republic* (1973) 3 C.L.R. 627; *Michaeloudes And Another* v. *The Republic* (1979) 3 C.L.R. 56; *Malachtou* v. *The Attorney-General* (1981) 1 C.L.R. 543; *Ploussiou* v. *The Central Bank of Cyprus* (1983) 3 C.L.R. 398; *Newberry D.C.* v. *Secretary of State* [1980] 1 All E.R. 731 (H.L.).

code, leading to his interdiction, were misinitiated and legally invalid.

Aside from the invalidity of the Regulations, it was argued for the appellant that reg. 4(1) conferred no power to interdict following disciplinary proceedings. It is appropriate to note in parenthesis, before debating this submission, that we are in agreement with the decision of the learned trial Judge that the decision to initiate disciplinary proceedings was not in itself an executory act; while a decision to interdict is, on principle and authority* an executory act, albeit one closely associated with the initiation of disciplinary proceedings. Of course, the legality of the disciplinary proceedings was examined for it constituted the foundation upon which interdiction rested. If illegal, the foundation collapsed and, with it, everything resting thereon.

Reverting to the submission of the appellant that reg. 4(1) conferred no power to interdict, the argument is that reg. 4(1) did not, in terms, incorporate the provisions of s.84 of Law 33/67 providing for interdiction. Reg. 4(1) purported, albeit unsuccessfully, as indicated above, to incorporate the provisions of s.73 to s.85 of Law 33/67, in two respects:

(a) Πειθαρχική ευθύνη (disciplinary responsibility)

and,

(b) πειθαρχική δίωξη (disciplinary prosecution).

Interdiction is not an incident of either. Disciplinary responsibility encompasses every obligation to abide by and observe a code of conduct, whereas disciplinary prosecution embraces every procedural step relevant to the initiation and conduct of disciplinary proceedings. We have it on authority** that interdiction is an administrative measure independent of, though related to, a disciplinary prosecution. Interdiction is not a punishment but a precautionary measure that may be taken in the interests of the efficacy of the service. Consequently, reg. 4(1) did not incorportae the provisions of s.84

* See, inter alia, *Veis And Others* v. *The Republic* (1979) 3 C.L.R. 390; *Grigoropoulos* v. *The Republic* (1984) 3 C.L.R. 449.

** See, inter alia, *Veis And Others* v. *The Republic* (1979) 3 C.L.R. 390, 412; *Azinas* v. *The Repblic* (1980) 3 C.L.R. 510, 521; *Conclusions from the Jurisprudence of the Greek Council of State* 1929–59, p. 368.

and, this is an additional reason for annulling the decision to interdict the appellant.

For the reasons given in this judgment, the judgment of the trial Court is set aside and the decision to interdict the appellant annulled.

Let there be no order as to costs.

Appeal allowed.