

1984 January 21

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

PANAYIOTIS ORPHANOS,

Applicant,

v.

THE ACTING COMMISSIONER AND REGISTRAR
OF GREEK CO-OPERATIVE SOCIETIES,

Respondent.

(Case No. 505/81).

Disciplinary Offences—Conviction of offences involving moral turpitude—Termination of services without affording to officer an opportunity to be heard—Rules of natural justice violated—Sub judice termination of services annulled.

5 Following his conviction of offences involving moral turpitude applicant's services, as an employee of the Audit and Supervision Fund of Co-operative Societies, were terminated by the respondent; and hence this recourse.

10 Counsel for the applicant contended that as the respondent decided to terminate the services of the applicant without affording him an opportunity to be heard, the rules of natural justice have been violated and, therefore, his sub judice decision had to be annulled.

15 *Held*, that notwithstanding the seriousness of the offences of which the applicant was convicted it was imperative to afford to him an opportunity to be heard by the respondent before the respondent would reach his decision as to whether or not to terminate his services; and that, therefore, the sub judice decision of the respondent, which was reached without the
20 applicant having been heard, has to be declared to be null and void and of no effect whatsoever (see, also, section 83 of Law 33/67 and section 73 of Law 10/69).

Sub judice decision annulled.

Cases referred to:

Orphanos v. Acting Commissioner and Registrar of Greek Co-operative Societies (1983) 3 C.L.R. 1369;

Morsis v. Republic, 4 R.S.C.C. 133 at p. 137;

Republic v. Mozoras (1966) 3 C.L.R. 356 at p. 382; 5

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

HjiSinnos v. Republic (1969) 3 C.L.R. 451 at p. 457-459;

Fisentzides v. The Republic (1971) 3 C.L.R. 80 at p. 85;

Kyprianou v. Public Service Commission (1973) 3 C.L.R. 206
at p. 224; 10

Jordanous v. Republic (1974) 3 C.L.R. 194 at p. 201;

Jordanou v. Republic (1979) 3 C.L.R. 22 at pp. 26-31;

Constantinou v. Republic (1981) 3 C.L.R. 215 at p. 219.

Recourse.

Recourse against the decision of the respondent to terminate applicant's services as an employee of the Audit and Supervision Fund of Co-operative Societies. 15

E. Efstathiou with *M. Papamichael*, for the applicant.

M. Photiou, for the respondent.

Cur. adv. vult. 20

TRIANAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Acting Commissioner and Registrar of Greek Co-operative Societies, dated 16th October 1981, to terminate his services as an employee of the Audit and Supervision Fund of Co-operative Societies after he had been convicted of offences involving moral turpitude and was sentenced to twelve months' imprisonment. 25

The facts of this case appear in an interim Decision which was delivered in relation to a preliminary issue raised in these proceedings (see the Decision in *Orphanos v. The Acting Commissioner and Registrar of Greek Co-operative Societies*, delivered 30

on the 27th July 1983 and not yet reported)*; and such Decision should be read together with, and be treated as incorporated in, the present judgment.

5 The basic issue which has to be dealt with in this judgment arises out of the contention of counsel for the applicant that, as the respondent decided to terminate the services of the applicant without affording him an opportunity to be heard, the rules of natural justice have been violated and, therefore, his sub judice decision has to be annulled.

10 It has not been disputed by counsel for the respondent that the applicant was not afforded an opportunity to be heard, but it has been submitted by him that in the circumstances of the present case the failure to adopt such a course does not vitiate the sub judice decision as, even if the applicant had been heard
15 before the respondent terminated his services, the situation could not have changed at all in his favour in view of the nature of the offences of which the applicant was convicted.

It is pertinent to refer, first, to relevant case-law of this Court:

20 In *Morsis v. The Republic*, 4 R.S.C.C. 133, there were stated the following (at p. 137):

“This Court has already held that the Commission in exercising disciplinary control ‘has to comply with certain well-established’ principles of natural justice and the accepted procedure governing dismissal of public officers,
25 because dismissal by the Commission is a matter of public law and not of private law’ (vide *Andreas A. Marcoullides and The Republic*, (*Public Service Commission*); 3 R.S.C.C. p. 30 at p. 35): that the rules of natural justice ‘which also under Article 12 are made applicable to offences in general, should be adhered to in all cases of disciplinary control in the domain of public law’ and that the procedure applicable in the particular matter must be applied subject to the said rules (vide *Nicolaos D. Haros and The Republic (Minister of Interior)*, 4 R.S.C.C. p. 39 at p. 44); that ‘strict
30 adherence to the principle concerned is most essential, in spite of the fact that such a course may occasionally result in causing some delay and that the reasons for dismissing a public officer may sometimes be, prima facie, so overwhelming as to render it improbable that anything

* Now reported in (1983) 3 C.L.R. 1369.

will be forthcoming from him which would render his dismissal unnecessary', (Vide *Maro N. Pantelidou and the Republic: (Public Service Commission)*, 4 R.S.C.C. p. 100 'at p. 106)').

The case of *Moris*, supra, was referred to with approval in *The Republic v. Mozoras*, (1966) 3 C.L.R. 356, where it was said (at p. 382) that: 5

"It has already been stated by our courts, time and time again, that the Commission in exercising disciplinary control 'has to comply with certain well-established principles of natural justice and the accepted procedure governing dismissal of public officers'—(vide *Markoullides and The Republic*, 3 R.S.C.C. p. 30, at p. 35; *Haros and The Republic* 4 R.S.C.C. p. 39, at p. 44; *Pantelidou and The Republic*, 4 R.S.C.C. p. 100, at p. 106 and *Morsis and The Republic* (supra, at p. 137)". 10 15

It is, also, useful to refer, in this respect, to *Orphanides v. The Republic*, (1968) 3 C.L.R. 385, 392 and *HadjiSininos v. The Republic*, (1969) 3 C.L.R. 451, 457-459.

As regards, in particular, the duty of an administrative organ to afford to a public officer an opportunity to be heard in mitigation of punishment reference may be made to cases such as *Fisentzides v. The Republic*, (1971) 3 C.L.R. 80, 85, 86, *Kyprianou v. The Public Service Commission*, (1973) 3 C.L.R. 206, 224, *Iordanous v. The Republic*, (1974) 3 C.L.R. 194, 201, *Iordanou v. The Republic*, (1979) 3 C.L.R. 22, 26-31 and *Constantinou v. The Republic*, (1981) 3 C.L.R. 215, 219. 20 25

Also, it is pertinent to refer to legislative provisions applicable to situations analogous to that in the present case, such as section 83 of the Public Service Law, 1967 (Law 33/67), the relevant part of which reads as follows: 30

"83.—(1) Where a public officer has been convicted of an offence involving dishonesty or moral turpitude and the conviction has either been upheld on appeal or no appeal has been made, the Commission shall as expeditiously as possible obtain a copy of the notes of the proceedings of the Court which tried the case and of the Court, if any, to which an appeal was made. 35

(2) The Commission shall, within such period as may be prescribed, and until such period is prescribed within two weeks of the receipt of the copy of the notes of the proceedings as in sub-section (1), seek the views of the Attorney-General of the Republic on whether the offence is one involving dishonesty or moral turpitude. The Attorney-General of the Republic shall advise thereon as expeditiously as possible and, in the event of an advice in the affirmative, the Commission, without any further investigation and after giving the officer concerned an opportunity of putting forward any representations he wishes to make, shall impose such disciplinary punishment as may be justified in the circumstances".

To the same effect are, also, the provisions of section 73 of the Public Educational Service Law, 1969 (Law 10/69).

In the light of the foregoing I am of the view that notwithstanding the seriousness of the offences of which the applicant was convicted it was imperative to afford to him an opportunity to be heard by the respondent before the respondent would reach his decision as to whether or not to terminate the services of the applicant and, therefore, the sub judice decision of the respondent, which was reached without the applicant having been heard, has to be declared to be null and void and of no effect whatsoever.

As regards the costs of this case I have decided not to make any order.

Sub judice decision annulled. No order as to costs.