1984 February 2

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

IOSIF PAYIATAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS,

Respondent.

(*Case No.* 306/83)

Administrative Law—Administrative acts or decisions—Executory act—Preparatory act—Public Officers—Manager of Cyprus Ports Authority—Decision to initiate disciplinary proceedings against him and/or to appoint an investigating officer to conduct a disciplinary investigation—Not an executory act but a preparatory act which cannot be made the subject of a recourse under Article 146.1 *of the Constitution.*

Cyprus Ports Authority—Manager of—Disciplinary investigation against—Interdiction—Possible under the Law—Sections 73-85 *of the Public Service Law,* 1967 (*Law* 33/67) *incorporated by reference in regulation* 4(1) *of the Regulations made by the Authority in* 1982 *in exercise of its powers under section* 19(2) *of the Cyprus Ports Authority Law,* 1973 (*Law* 38/73)—*Said regulation* 4 *not ultra vires section* 19(2) *of the Law—Section* 19 *of the Interpretation Law, Cap.* 1 *not applicable.*

Administrative Law—Administrative acts or decisions—Reasoning—May be supplemented by the material in the file—Sufficient reasoning in the relevant file why the respondent has come to the conclusion that the interdiction of applicant was necessary in the public interest—Kazamias v. Republic (1982) 3 *C.L.R.* 239 *distinguished.*

Disciplinary offences—Interdiction—It does not form part of the disciplinary process because it is an administrative measure which comes into play if and when a disciplinary investigation is ordered.

The applicant has at all times material to these proceedings been the General Manager of the Cyprus Ports Authority. On the 14th April, 1983 the Board of the Authority decided to propose to the Council of Ministers to initiate a disciplinary investigation against the applicant under section 80(b) of the Public Service Law, 1967 (Law 33/67); and taking into consideration that "it is not possible or practical for the Board to appoint as investigating officer any officer of the Authority, as there is no officer holding a higher post to that of the applicant, decided to refer the question of the appointment of an investigating officer to the Council of Ministers, according to the proviso of reg. 1, of the Second Schedule, Part I, of the Public Service Laws.

The Board, also, considered the question of the interdiction of the General Manager till the conclusion of the disciplinary proceedings against him; and decided that for the purpose of the unobstructed and unprejudiced carrying out of the investigation and also due to the serious nature of the offences which the General Manager may have committed, it was for the public interest to propose to the Council of Ministers to interdict the General Manager pending the conclusion of the case.

The Council of Ministers after considering the above proposals of the Board decided to appoint "Mr. Nicos Charalambous, Senior Counsel of the Republic, as an investigating officer for the purpose of carrying out an investigation in connection with the probable commission by the General Manager of the Ports Authority of Cyprus, of disciplinary offences. The Council of Ministers, also, decided to interdict the applicant in the public interest and allow him to draw three quarters of his regular emoluments during the period of his interdiction.

When the applicant was informed of the above decisions he filed a recourse against the Council of Ministers whereby he prayed for a declaration that:-

"(a) The decision of the respondent dated 1.7.83 which is contained in the letter of the Minister of Communications and Works dated the 5th July, 1983 to interdict the applicant is unlawful, void and of no effect whatever.

(b) The decision of the respondent of the same date, and

contained in the aforesaid letter, to initiate disciplinary proceedings against the applicant and/or to appoint an investigating officer to conduct disciplinary investigation against the applicant is unlawful, void and of no effect whatsoever."

Under the provisions of section 2 of the Cyprus Ports Authority Law, 1973 (Law 38/73) an officer of the Authority is defined as any person holding any post in the Authority and includes the General Manager. The General Manager is appointed by the Council of Ministers in consultation with the Board of the Authority and he acts under the control and supervision of the Authority and his services can only be terminated with the previous approval of the Council of Ministers (see section 18(1)(2) of the Law). Under the provisions of s. 19(2) of the Law the Authority is empowered with the approval of the Council of Ministers to issue Regulations on any matters concerning the terms of employment of its officers and in particular matters touching their appointment, promotion, dismissal e.t.c. as well as discipline and matters related to hierarchical recourse in case of dismissal or other disciplinary sanctions. In exercise of its powers under s.19(2) and with the approval of the Council of Ministers the Authority made Regulations which were published in the Official Gazette of the Republic (1982) Suppl. No. 3 Notification 317. Regulation 4(3)* of these Regulations defined the duties and responsibilitites of the General Manager and the Officers of the Authority as including the duties and responsibilities of a public officer as those are defined in the Public Service Laws 1967 to 1981 and by virtue of regulations 4(1)** and (2)** the provisions of sections 73 to 85, which also include the First and Second Schedule of the Public Service Laws of 1967 to 1981, applied mutatis mutandis with regard to the disciplinary responsibility and disciplinary process of the General Manager and the remaining officers of the Authority.

The sole issues for consideration were:

(1) Whether the decision to appoint an investigating officer to carry out an investigation concerning the alleged commission

* Regulation 4(3) is quoted at pp. 176–177 post.

** Regulation 4(1) and (2) are quoted at pp. 177–178 post.

by the applicant of disciplinary offences, was an executory act of its own which can be challenged by this recourse.

(2) The merits of paragraph (a) of the recourse.

Regarding issue (2) above Counsel for the applicants contended:

(a) That the interdiction of the applicant was not possible under the Law.

(b) That regulation 4 was ultra vires section 19(2) of Law 38/73.

(c) That section 19 of the Interpretation Law, Cap. 1 was not applicable.

(d) That the sub judice decision was not duly reasoned in that the invocation of public interest by itself, was not a sufficient or proper reasoning.

Held, (1) that the decision to initiate disciplinary proceedings against the applicant and/or to appoint an investigating officer to conduct a disciplinary investigation against the applicant is a preparatory act, a step aimed to elicit whether there is evidence in respect of the alleged disciplinary offences to support a charge, and as such, not amenable to judicial review; accordingly applicants' prayer under paragraph (b) of the recourse must fail.

Held, further that once the Board of the authority, which took the decision that an investigation should be carried out and an investigating officer be appointed, has not been made a party to these proceedings and its decision has not been challenged, part (b) of this recourse was bound to fail independently of the fact that, being of a preparatory nature, is not amenable by a recourse.

(2) That regulation 4(1) incorporated by reference to the provisions of sections 73-85 of Part VII of the Public Service Law, 1967 (Law 33/67) under the heading "Disciplinary code"; that, therefore, all sections of Law 33/67 between 73 and 85 must be read in regulation 4(1); that the words "with regard to the disciplinary responsibility and disciplinary process of the General Manager" in regulation 4(1) do not in any way purport to exclude the application of section 84 of Law 33/67 which makes provision for interdiction; that in Law 33/67 interdiction comes under the general heading (of Part VII of the Law) "Disciplinary

Code" despite the fact that it does not form part of the disciplinary process, because it is an administrative measure which comes into play if and when a disciplinary investigation is ordered; accordingly the interdiction of the applicant was possible under the Law.

(3) That regulation 4 is not ultra vires section 19(2) of Law 38/73.

(4) That the General Manager as an "officer" of the Authority can be interdicted under section 84(1) of Law 33/67, which is one of the sections incorporated in regulation 4(1) of the Regulations of the Authority, made under section 19(2) of the Cyprus Ports Authority Laws, 1973 to 1977, by the appropriate organ entrusted with such power, such organ being the Council of Ministers; that since the Court is only concerned now with the interdiction of the applicant for which provision is made in the Law, section 19 of Cap. 1 is not applicable in this respect in the present case.

(5) That the reasoning in a case may be supplemented by the material before the Court; that from the voluminous material before this Court there is sufficient reasoning why the respondent has come to the conclusion that, in the circumstances, the interdiction of the applicant, pending the conclusion of the investigation, was considered as necessary in the public interest (*Kazamias v. Republic* (1982) 3 C.L.R. 239 distinguished).

Application dismissed.

Cases referred to:

Papanicolaou (No.1) v. Republic (1968) 3 C.L.R. 225;

Frangos and Others v. Republic (1982) 3 C.L.R. 53;

Gavriel v. Republic (1971) 3 C.L.R. 185;

Decesions of the Greek Council of State Nos.: 1156/37, 1336/50;

Koupepa v. Municipal Committee of Municipal Corporation of Limassol (1968) 3 C.L.R. 496 at p. 500;

Markou v. Republic (1968) 3 C.L.R. 267 at p. 276;

Prodromou v. Republic (1982) 3 C.L.R. 1055 at p. 1058;

Chrysafinis v. Republic (1982) 3 C.L.R. 320 at pp. 326, 329;

Kolokassides v. Republic (1965) 3 C.L.R. 542 at p. 551;

Amathus Navigation Co. v. Republic (1979) 3 C.L.R. 10 at p. 20;

Veis and Others v. Republic (1979) 3 C.L.R. 390 at pp. 405, 406;
Azinas v. Republic (1980) 3 C.L.R. 510;
Dalitis v. Republic (1970) 3 C.L.R. 205 at p. 209;
Kazamias v. Republic (1982) 3 C.L.R. 239;
Fournia Ltd. v. Republic (1983) 3 C.L.R. 262;
Petrides v. Republic (1983) 3 C.L.R. 216;
Hjiloannou v. Republic (1983) 3 C.L.R. 536;
Marangos v. Republic (1983) 3 C.L.R. 682;
HjiCleanthous v. Republic (1983) 3 C.L.R. 810.

Recourse.

Recourse against the decision of the respondent whereby applicant was interdicted pending a disciplinary investigation initiated against him for alleged disciplinary offences.

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

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

Cur. adv. vult.

SAVVIDES J. read the following judgment. The applicant by this recourse challenges the decision of the respondent dated 1.7.1983 whereby the applicant was interdicted pending a disciplinary investigation initiated against him for alleged disciplinary offences and an investigating officer was appointed to conduct such investigation.

The said decision is contained in a letter dated the 5th July, 1983 signed by the Minister of Communications and Works and sent to the applicant through the Chairman of the Board of the Cyprus Ports Authority, which reads as follows:

"I have been instructed by the Council of Ministers to inform you that the Council at its meeting of the 1st July, 1983 (decision No. 23.360) decided:

(a) to appoint, according to the proviso to Regulation 1 of Part I of the Second Schedule to the Public Service Laws 1967 to 1983, Mr. Nicos Charalambous, Senior Counsel of the Republic, as an investigating officer to carry out an investigation concerning the alleged commission by you of disciplinary offences

in the course of the execution of your duties as General Manager of the Cyprus Ports Authority; and

(b) to interdict you in the public interest, and during the period of your interdiction to allow you to draw three fourths of your normal emoluments.

2. The investigating officer will inform you about the case against you in accordance with the established procedure under the Law".

The applicant was appointed as General Manager of the Cyprus Ports Authority on the 29th January, 1976, by the Council of Ministers (Decision 14.631) after consultation with the Board of the Authority, as provided by section 18 of the Cyprus Ports Authority Law 38/73, and has been holding such post eversince. Prior to such appointment, he was in the employment of the Republic since 1961 and at the time of his retirement, in 1976, when he accepted appointment in the present post, he was holding the post of the Senior Planning Officer.

The Cyprus Ports Authority is a Statutory Authority established and operating under the provisions of the Cyprus Ports Authority Law, 1973 (Law 38 of 1973), as amended by Law 59/77, the object of which is to "provide for the establishment of an Authority under the name of Cyprus Ports Authority, for the purpose of administration and utilisation of all ports of the Republic and the transfer to such Authority of all existing ports and all their assets and liabilities and also in respect of any related matters". The Authority is governed by a Board consisting of a chairman, a vice-chairman and four members appointed by the Council of Ministers and holding office for three years subject to termination or renewal, and, also, as an additional "ex officio" member, the Director of the Customs Department.

From what appears from the voluminous documents annexed to the opposition, since April, 1978, the relations between the applicant and the Board of the Authority became strained. The Board was alleging against the applicant inability and failure to discharge his duties efficiently. A lengthy reference to such failure is set out in an 11 pages letter dated the 24th April,

1978, addressed to the applicant by the Chairman of the Authority (copy of which is attached to the opposition).

The applicant, as it appears from the contents of a letter dated the 13th January, 1979 (copy of which is annexed to the opposition) sent to him by the Chairman of the Board of the Authority, offered certain explanation which were considered as unacceptable by the Board, the Chairman of which by the said letter repeated the allegations for failure by the applicant to discharge his duties. As it appears from the various annexes to the opposition in which reference is made to lengthy correspondence between the applicant and the Board, the grudge between the Board and the applicant reached its climax in April, 1980, when the Chairman of the Board acting on behalf of the Board, sent to the Minister of Communications and Works a letter dated the 25th April, 1980, in which, after referring to the relations of the applicant with the Board, concluded as follows:-

> "This dangerous situation was considered by the Board of the Authority at a special meeting on the 23rd April, 1980, in the presence of the legal adviser of the Authority and decided unanimously to ask for the proper removal of Mr. I. Payiatas from the post of General Manager of the Authority and request you to take all appropriate measures for such purpose."

The Minister of Communications and Works submitted on the 10th July, 1980, a written proposal to the Council of Ministers on the matter, which was considered at its meeting of 31.7.80 and the Council decided to appoint the Deputy Attorney-General of the Republic and the Head of the Personnel Department of the Ministry of Finance as a Commission of Inquiry under section 14 of Law 38/73 to "inquire into the accusations of the Board of the Cyprus Ports Authority against the General Manager of the Authority and also the causes which lead to the disturbance of the relations of the Board with the General Manager of the Authority."

For the purposes of the present recourse I find it unnecessary to describe in detail the procedure which took place before such Commission of Inquiry and the accusations of the Board of the Authority and the applicant against each other as they are not in issue at this stage of the proceedings.

The Commission of Inquiry, finally, after consideration of all material before it, including any material made available by the applicant and the contents of his letter in answer to the accusations of the Board of the Authority, as well as his oral explanations, concluded that there was sufficient material substantiating a prima facie case against the applicant in respect of eleven accusations and submitted its report (Annex 'K') to the Minister of Communications and Works by letter dated 7.3.1983, in which particulars of the eleven accusations and summary of the material substantiating each one of them is set out.

The Minister of Communications and Works, submitted such report to the Council of Ministers with his proposal that the findings of the Commission of Inquiry be forwarded to the Board of the Authority for its information and further action. The Council of Ministers at its meeting of 31st March, 1983, (Decision No. 22.970) adopted such proposal and forwarded the report to the Board of the Authority which at its meeting of the 14th April, 1983, decided unanimously as follows:

> "Due to the serious nature of the offences which the General Manager may have committed and the circumstances under which they were committed, to propose to the Council of Ministers to initiate a disciplinary investigation under section 80(b) of the Public Service Law to the extent it is applicable.
>
> Taking into consideration that it is not possible or practical for the Board to appoint as investigating officer any officer of the Authority, as there is no officer holding a higher post to that of the applicant, decided to refer the question of the appointment of an investigating officer to the Council of Ministers, according to the proviso of Reg. 1 of the Second Schedule, Part I, of the Public Service Laws.
>
> The Board then considered the question of the interdiction of the General Manager till the conclusion of the disciplinary proceedings against him. This matter is within the competence of the Council of Ministers according to the above mentioned Regulation 4(2) and s.84 of the Public Service Laws.
>
> The Board unanimously decided that for the purpose of

the unobstructed and unprejudiced carrying out of the investigation and also due to the serious nature of the offences which the General Manager may have committed, it is for the public interest to propose to the Council of Ministers to interdict the General Manager pending the conclusion of the case.

....."

The decision was submitted to the Council of Ministers by letter dated the 16th April, 1983, together with the minutes of the meeting at which the decision was taken (Annex 'N' to the opposition).

The Council of Ministers considered the proposals of the Board of the Authority at its meeting of the 1st July, 1983 (Decision No. 23.360), accepted them and decided:

"(a) In accordance with the proviso to Reg. 1 of Part I of the Second Schedule of the Public Service Laws 1967 to 1983, to appoint Mr. Nicos Charalambous, Senior Counsel of the Republic, as an investigating officer for the purpose of carrying out an investigation in connection with the probable commission by the General Manager of the Ports Authority of Cyprus, Mr. I. Payiatas, of disciplinary offences in respect of the eleven cases which are mentioned in the report of the Commission of Inquiry which was submitted to the Council by the Minister of Communications and Works; and

(b) to interdict Mr. Payiatas in the public interest, and allow him to draw three quarters of his regular emoluments during the period of his interdiction."

The said decision was communicated to the applicant through the Chairman of the Board of the Authority by letter dated the 5th July, 1983 signed by the Minister of Communications and Works. Reference to its contents has already been made earlier in this judgment.

Upon receipt of such letter the applicant filed the present recourse whereby he prays for a declaration that -

"(a) The decision of the respondent dated 1.7.83 which is

contained in the letter of the Minister of Communications and Works dated the 5th July, 1983 to interdict the applicant is unlawful, void and of no effect whatsoever.

(b) The decision of the respondent of the same date, and contained in the aforesaid letter, to initiate disciplinary proceedings against the applicant and/or to appoint an investigating officer to conduct disciplinary investigation against the applicant is unlawful, void and of no effect whatsoever."

A number of grounds of law were set out in support of the application, but those relied upon and argued by counsel for applicant in his written address are:

1. *Concerning interdiction.*

(a) The interdiction of the applicant is not possible under the law.

(b) Regulation 4 is ultra vires section 19(2) of the law.

(c) Section 19 of the Interpretation Law, Cap. 1, is inapplicable.

(d) Respondent's decision complained of is not duly reasoned.

2. *Concerning disciplinary proceedings.*

(a) Ultra vires Regulations.

(b) The procedure is contrary to law.

(c) There was breach of the Rules of Natural Justice.

Counsel for respondent on the other hand raised a preliminary objection that the sub judice decision to appoint an investigating officer and to initiate disciplinary proceedings against the applicant is not an act of executory character in that it is of a preparatory nature or an inextricable ingredient of a composite administrative act. Subject to the above, he rejected the contentions of counsel for applicant and submitted that the decision was properly taken in accordance with the Law and the Regulations, to give effect to the decision of the Board of the Authority to that end and that the recourse of the applicant should be dismissed as groundless.

Before dealing with the issues posing for determination in this recourse, I shall consider the relevant provisions in the law touching the matters in issue.

The powers of the Ports Authority as well as matters related to the appointment and dismissal of the General Manager of the Authority, are to be found in the provisions of Law 38 of 1973 as amended by Law 59/77.

Under the provisions of section 2 "ὑπάλληλος" (officer) of the Authority is defined as follows:

" 'ὑπάλληλος' σημαίνει τὸν κατέχοντα θέσιν παρὰ τῇ 'Αρχῇ εἴτε μονίμως εἴτε προσωρινῶς εἴτε ἀναπληρωτικῶς, περιλαμβάνει δὲ τὸν Γενικὸν Διευθυντὴν τῆς 'Αρχῆς".

('officer' means any person holding any post in the Authority in a permanent, temporary or acting capacity and includes the General Manager of the Authority')

The General Manager is appointed by the Council of Ministers in consultation with the Board of the Authority and he acts under the control and supervision of the Authority and his services can only be terminated with the previous approval of the Council of Ministers (section 18(1)(2)).

Under the provisions of s. 19(2) the Authority is empowered with the approval of the Council of Ministers to issue regulations on any matters concerning the terms of employment of its officers and in particular matters touching their appointment, promotion, dismissal e.t.c. as well as discipline and matters related to hierarchical recourse in case of dismissal or other disciplinary sanctions.

In the exercise of its powers under s. 19(2) and with the approval of the Council of Ministers the Authority made regulations which were published in the Official Gazette of the Republic (1982) Suppl. No. 3 Notification 317.

By virtue of reg. 4(3) the duties and responsibilities of the General Manager are defined as follows:

"(3) Γιὰ τοὺς σκοποὺς αὐτοῦ τοῦ Κανονισμοῦ τὰ καθήκοντα καὶ οἱ ὑποχρεώσεις τοῦ Γενικοῦ Διευθυντὴ καὶ τῶν ὑπαλλήλων τῆς 'Αρχῆς περιλαμβάνουν τὰ καθήκοντα καὶ τὶς ὑποχρεώσεις Δημοσίου ὑπαλλήλου ὅπως αὐτὰ καθορίζονται στοὺς περὶ

Δημοσίας Ὑπηρεσίας Νόμους τοῦ 1967 ὡς 1981, τηρουμένων τῶν ἀναλογιῶν, καθὼς καὶ τὰ καθήκοντα καὶ τὶς ὑποχρεώσεις τους μὲ βάση τὸ Νόμο, τοὺς Κανονισμούς, διοικητικὲς πράξεις, διαταγὲς ἢ ὁδηγίες, ποὺ ἐκδίδονται μὲ βάση τὸ Νόμο, ἢ μὲ βάση ὁποιοδήποτε ἄλλο Νόμο, Κανονισμούς, ἢ διοικητικὲς πράξεις".

The English translation of which reads as follows:

("(3) For the purposes of this Regulation the duties and responsibilities of the General Manager and the officers of the Authority include the duties and responsibilities of a public officer as those are defined in the Public Service Laws 1967 to 1981, subject to the necessary qualifications as well as their duties, and responsibilities on the basis of the Law, the Regulations, administrative acts, orders or directions which are issued on the basis of the Law, or on the basis of any other Law, Regulations, or administrative acts.")

Matters touching disciplinary responsibility and disciplinary process against the General Manager and the other officers of the Authority are governed by paragraphs (1) and (2) of regulation 4 which provide as follows:

"4.-(1) Οἱ διατάξεις τῶν ἄρθρων 73 ὡς 85, ποὺ περιλαμβάνουν καὶ τὸν Πρῶτο καὶ Δεύτερο Πίνακα τῶν περὶ Δημοσίας Ὑπηρεσίας Νόμων τοῦ 1967 ὡς 1981, ἐφαρμόζονται, τηρουμένων τῶν ἀναλογιῶν, ἀναφορικὰ μὲ τὴν πειθαρχικὴ εὐθύνη καὶ πειθαρχικὴ δίωξη τοῦ Γενικοῦ Διευθυντῆ, οἱ ὅροι δὲ 'ἁρμοδία ἀρχὴ' καὶ ''Επιτροπὴ Δημοσίας 'Υπηρεσίας' ἀντικαθίστανται μὲ τοὺς ὅρους 'Διοικητικὸ Συμβούλιο' καὶ ''Υπουργικὸ Συμβούλιο', ἀντίστοιχα.

(2) Οἱ διατάξεις τῶν ἄρθρων 73 ὡς 85, ποὺ περιλαμβάνουν καὶ τὸν Πρῶτο καὶ Δεύτερο Πίνακα τῶν περὶ Δημοσίας Ὑπηρεσίας Νόμων τοῦ 1967 ὡς 1981, ἐφαρμόζονται, τηρουμένων τῶν ἀναλογιῶν, ἀναφορικὰ μὲ τὴν πειθαρχικὴ εὐθύνη καὶ πειθαρχικὴ δίωξη τῶν ὑπόλοιπων ὑπαλλήλων, οἱ ὅροι δὲ ' ἁρμοδία ἀρχὴ' καὶ ' 'Επιτροπὴ Δημοσίας 'Υπηρεσίας' ἀντικαθίστανται μὲ τοὺς ὅρους 'Γενικὸς Διευθυντὴς' καὶ 'Διοικητικὸ Συμβούλιο', ἀντίστοιχα".

The English translation of which reads:

("4. - (1) The provisions of sections 73 to 85, which

also include the First and Second Schedule of the Public Service Laws of 1967 to 1981, apply mutatis mutandis with regard to the disciplinary responsibility and disciplinary process of the General Manager, and the terms 'appropriate authority' and 'Public Service Commission' are substituted with the terms 'Board' and 'Council of Ministers' respectively.

(2) The provisions of sections 73 to 85, which also include the First and Second Schedule of the Public Service Laws of 1967 to 1981, apply, mutatis mutandis, with regard to the disciplinary responsibility and disciplinary powers of the remaining officers, and the terms 'appropriate authority' and 'Public Service Commission' are substituted with the terms "General Manager" and "Board" respectively.")

In the case where the General Manager is reported that he may have committed a disciplinary offence other than one of those specified in Part I of the First Schedule, the Authority may, under section 80(b) of the Public Service Laws 33 of 1967 to 78 of 1981, cause an investigation to be carried out in the prescribed manner and then proceed as provided by section 82(1) of the same Laws to refer the matter to the Council of Ministers forwarding to it:

(a) the report of the investigation,

(b) the charge to be brought signed by the Authority, and

(c) the evidence in support thereof

and disciplinary proceedings are then commenced by the Council of Ministers in the manner set out in section 82(2)(3)(4) of Laws 33/1967 to 78/1981.

The manner of carrying out an investigation under section 80(b) is prescribed by the Regulations appearing in the Second Schedule Part I of Laws 33/67 to 78/81. Regulation 1 provides as follows:

"1. Ἡ ἐνδιαφερομένη ἁρμοδία ἀρχὴ ὁρίζει τὸ ταχύτερον ἕνα ἢ πλείονας λειτουργοὺς τοῦ Ὑπουργείου ἢ Γραφείου αὐτῆς (ἐν τῷ παρόντι Μέρει ἀναφερομένους ὡς ὁ 'ἐρευνῶν λειτουργὸς') ὅπως διεξαγάγωσι τὴν ἔρευναν. Ὁ ἐρευνῶν

λειτουργὸς ἀπαιτεῖται νὰ εἶναι ἀνώτερος ὑπάλληλος, καὶ ὑψηλοτέρου τοῦ περὶ οὗ πρόκειται ὑπαλλήλου βαθμοῦ:

Νοεῖται ὅτι, ἐὰν εἰς οἱανδήποτε ὑπόθεσιν ἡ ἁρμοδία ἀρχὴ θεωρῇ ὅτι δὲν θὰ ἦτο δυνατὸν, πρακτικὸν ἢ ἐφαρμόσιμον νὰ διορίσῃ ἐρευνῶντα λειτουργὸν ἐκ τοῦ Ὑπουργείου ἢ Γραφείου αὐτῆς, παραπέμπει τὸ ζήτημα εἰς τὸ Ὑπουργικὸν Συμβούλιον τὸ ὁποῖον ὁρίζει κατάλληλον λειτουργὸν ὅπως διεξαγάγῃ τὴν ἔρευναν".

The English translation of which reads:

("1. The appropriate authority concerned shall, as, expeditiously as possible, nominate one or more officers of its Ministry or Office (in this Part referred to as 'the investigating officer') to conduct the investigation. The investigating officer shall be a senior officer who shall be of a higher rank than the officer concerned:

Provided that if in any case the appropriate authority considers that it would not be possible, practicable or advisable to nominate an investigating officer from its Ministry or Office, it shall refer the matter to the Council of Ministers which shall nominate a suitable officer to conduct the investigation").

When an investigation of a disciplinary offence is directed under the provisions of paragraph (b) of section 80 against the General Manager, the Council of Ministers may, if public interest so requires, interdict the General Manager from duty, pending the investigation and until the final disposition of the case, provided that the Council of Ministers shall allow him to receive such proportion of his emoluments, not being less than one-half, as the Council of Ministers may think fit (see section 84).

Under the provisions of section 14(2) of Laws 38/73 to 59/77 the Minister of Communications and Works, in case where he has reasons to believe that an investigation into the affairs of the Authority is necessary, may, with the approval of the Council of Ministers, appoint a Commission of Inquiry consisting of one or more persons to carry out an inquiry on a specified matter and submit to the Minister a report of its findings.

Having briefly dealt with the material, to the present case,

provisions in the law and regulations. I am coming to consider the issues before me.

Counsel on both sides elaborated at some length on the preliminary objection as to whether the decision to initiate a disciplinary investigation against the applicant and appoint an investigating officer for such purpose, is an executory decision amenable to a recourse. Counsel for the applicant in support of his contention that the preliminary objection is untenable sought to rely on the decision of *Panos Papanicolaou (No. 1)* v. *The Republic* (1968) 3 C.L.R. 225, whereas counsel for the respondent relied on the decision of *Frangos and Others* v. *The Republic* (1982) 3 C.L.R. 53. Counsel for respondents further submitted that the decision to initiate disciplinary process against the applicant, was not taken by the respondent Council of Ministers but by the Authority's Board, which is not a party in the present proceedings and respondent's decision to appoint Mr. N. Charalambous as investigating officers was a formal decision not requiring the exercise of any discretion by the respondent.

In the *Papanicolaou* (No. 1) case, the recourse was directed against a summons addressed by the Public Service Commission to the applicant calling upon him to appear before the Commission in relation to a disciplinary charge brought against him. During the argument before the Court, on the above issue, it was pointed out that in those proceedings there was being challenged not only the validity of the aforesaid summons but, also the complaint of the Minister, respondent 1, to the Council of Ministers, respondents 2, upon which complaint an investigation was directed, the report thereon having been, ultimately, placed before respondent 3, the Public Service Commission, for the purposes of setting in motion the relevant disciplinary proceedings before the Commission against the applicant. Counsel for the applicant submitted that the action taken, as above, in the matter by respondents 1 and 2, amounted to executory acts, that could be challenged as such, on their own by that recourse. In concluding on the question as to whether the issue of the summons and the decision of respondent 3, the Public Service Commission, to address it to the applicant, were acts or decisions of an executory nature, Triantafyllides, J. as he then was, said at pp. 230, 231:

"In my opinion the summons, exhibit 1, as well as the

decision of Respondent 3 to address it to the Applicant, form a preparatory step in the course of the disciplinary proceedings instituted against him by Respondent 3, and cannot be challenged, as such, by this recourse, as they are not of an executory nature. Their validity may be challenged only in a recourse challenging the validity of the outcome of the said disciplinary proceedings. (See, also, Decision 943/1933 of the Greek Council of State, vol. 1933 III p. 729, at p. 730). The fact that the said summons is a step in the course of disciplinary proceedings already embarked upon - in the sense that Respondent 3 must be taken to have decided to proceed disciplinarily against the Applicant before addressing to him the summons - does not render such summons, and the decision behind it, anything more than a preparatory step; preparatory to the final decision of the Commission on the merits of the matter."

In dealing with the argument as to whether the complaint of respondent 1 (The Minister of Health), to respondent 2, the Council of Ministers, upon which an investigation was directed by respondent 2 and the acts which followed, that is, the carrying out of the investigation by the Secretary of the Council of Ministers and the placing of such report before respondent 3, for the purposes of the relevant disciplinary proceedings against the applicant, amounted to executory acts that could be challenged, as such, on their own, he had this to say at pp. 231, 232:

"As far as the action taken by respondent 2 is concerned, it is clear from the provisions of sections 80(b) and 82(1) of Law 33/67 that it is of a preparatory, and not of an executory nature; so, this recourse to that extent fails, too, and is dismissed accordingly.

Regarding the decision of Respondent 1 to refer the disciplinary matter in question to respondent 2, and to set, thus, in motion the process which brought such matter before Respondent 3, the position is different:-

There is no dispute that respondent 1 acted in this way pursuant to the provisions of the proviso to section 80(a) of Law 33/67; in other words, he decided that the matter should be dealt with by Respondent 3, instead of inter-departmentally.

There is, further, no doubt that in the course of proceedings before the Commission the applicant runs the risk of suffering, for the same disciplinary charge, far heavier punishment than what could be inflicted on him if the same charge were dealt with interdepartmentally.

I am of the view that the decision of respondent 1 to act under the proviso to section 80(a) of Law 33/67, and refer the matter to respondent 3, does amount to an executory act, and can, thus, be, at this stage, the subject-matter of a recourse on its own; it can, of course, be attacked, also, by means of a recourse against the eventual outcome of the disciplinary proceedings before Respondent 3, which at present stand suspended; and after such outcome it can no longer be attacked on its own.

In my opinion the said decision of Respondent 1 is part of a composite disciplinary administrative action taken against the applicant; it is executory, because it has had the effect of deciding by which of two legally prescribed processes the charge against the applicant is to be determined; and, actually, due to it, Applicant is now exposed to the risk of heavier punishment; thus, it comes within the description of an executory act given earlier on in this judgment; therefore, as it has been stated already, it can be attacked by recourse, on its own, so long as the said composite action has not yet been completed by a final act (see Kyriakopoulos on Greek Administrative Law, 4th ed., vol. C. pp. 98-99, and also the Decisions of the Greek Council of State 1156/1937, vol. 1937 III p. 951, at p. 954, and 1336/1950, vol. 1950 A p. 1076, at p. 1077)."

In *Gavriel* v. *The Republic* (1971) 3 C.L.R. 185, where the appropriate authority, after a departmental inquiry was carried out, decided not to invoke the proviso to section 80(a), and deal with certain disciplinary offences summarily instead of referring them to the Public Service Commission, the decision in *Papanicolaou* (*No.* 1) case was relied upon by A. Loizou, J., in concluding that such decision was of an executory nature (p.202).

Papanicolaou (*No.*1) case was also applied, inter alia, in *Koupepa v. The Municipal Committee of the Municipal Corporation of Limassol* (1968) 3 C.L.R. 496, 500, *Markou* v. *The Repu-*

blic (1968) 3 C L R 267, 276, *Prodromou* v *The Republic* (1982) 3 C L R pp 1055 1058

Papanicolaou (*No* 1) case was criticized by Pikis, J., in *Frangos & Others* v *The Republic* (1982) 3 C L R 53 and *Chrvssafinis* v *The Republic* (1982) 3 C L R 320

In *Frangos* case the applicants, a number of police officers, sought to set aside the proceedings instituted against them before a disciplinary committee set up under regulation 10 A (c) of the Police Disciplinary Regulations and had applied for an interim order suspending the proceedings pending the final determination of the recourse It was the contention of the applicants that during the hearing of the disciplinary case against them, they discovered that the investigation was erroneously initiated to an extent that vitiated the proceedings in their entirety The Court dismissed both the application for an interim order as well as the recourse as doomed to failure on its face on the ground that the act complained of was of a preparatory character and, as such not amenable to the jurisdiction of the Court Pikis J had this to say at pp 58, 59

> 'Executory is an act directly productive of legal consequences Preparatory acts or acts forming part of the process designed to lead to an executory act and inextricably connected therewith, lack executory character because they leave the rights of the subject unaffected Here, no suggestion is made that the decision to prosecute the applicants before its disciplinary committee set up under reg 10A (c) had any impact on the rights of the applicants A person charged before a criminal court or a disciplinary committee is regarded in law to be innocent until the contrary is proved as a result of a valid determination by a competent court or a disciplinary committee, as the case may be That an accusation may attract a social stigma, is immaterial for it has no legal implications, nor should we allow or encourage such prejudices to prevail whenever they run counter to fundamental legal presumptions as that of innocence "

And went on as follows at pp 59, 60:

> "I have studied the decision in *Papanicolaou* with the greatest care, more so because it aims to import an exception

to the general rule that only acts directly productive of legal consequences are executory. Evidently, a decision to follow one disciplinary course instead of another leaves the rights of the accused unaffected. Either course for example may lead to his acquittal that would be confirmative of his rights all along, that he is innocent. Only a conviction has a bearing on the rights of the suspect and is amenable to review by this Court. The learned trial Judge does not appear to rest his decision in *Papanicolaou* on any exception to the general rule acknowledged in any jurisdiction treating administrative law as a separate branch of the law, and appears to rest his decision on the inherent justice of the principle propounded therein. I am unable to subscribe to this proposition for, I regard it as wrong in principle. To sustain it would involve a clear departure from the concept of an executory act a departure that introduces a deviation from the basic rule, with nothing objective to distinguish it from other preparatory acts. To sustain it, would involve acknowledging executory character to every preparatory or intermediate act that marks the future courses of a disciplinary act. Clearly, we would be travelling far away from the principle that, only acts that define to whatever extent it is competent for the administration to define the rights of the citizen are amenable to the revisional jurisdiction of this Court."

A short time later, Pikis, J., in the case of *Chryssafinis* v. *The Republic* (1983) 3 C.L.R. 320 followed his decision in *Frangos* case. The facts in that case were briefly as follows: The applicant was asking for the annulment of the decision of the investigating officer and his consequential submission of a case for disciplinary offences on the ground that it was vitiated by the failure of the investigating officer to afford the applicant an opportunity to be heard as provided in regulation 4 of the Second Schedule - Part I of the Public Service Law. The recourse was dismissed on the ground that the acts complained of were not of an executory character, subject to judicial review. He had this to say at pp. 325, 326:

"Putting aside for a moment my reservation as to the soundness of the principle evolved in *Papanicolaou*, the facts of the present recourse, particularly the nature of the decision

complained of, is different from that in *Papanicolaou* and, therefore, distinguishable therefrom. What is challenged here, is not the decision earmarking the future course of the disciplinary proceedings by adopting one of two alternative courses, but an error or omission on the part of the investigating officer in the discharge of his duties. Therefore, the applicant can derive no support from the case of *Papanicolaou*. Indeed, the proceedings are doomed to failure unless we rule that the findings of the investigating officer, as distinct from a decision to deal with the officer in either of the two ways envisaged by section 80(a), is, in itself, an executory act, a proper subject for judicial administrative review."

In *Prodromou* v. *The Republic* (1983) 3 C.L.R. 1055, 1058, Triantafyllides, P., after he had considered the decision in *Frangos* case, did not feel inclined to depart from his relevant reasoning in the *Papanicolaou* (*No.*1) case and added:

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

Having carefully considered the above cases, I am inclined to agree with the opinion expressed by Triantafyllides, P. in *Prodromou* case that *Papanicolaou* (*No.*1) case is distinguishable from the cases of *Frangos* and *Chryssafinis* as the stage in the disciplinary process in the latter two cases was not the same as that in the former case. Taking, however, into consideration the fact that the present case is also distinguishable from *Papanicolaou* (*No.*1) as what I have to decide at this stage is whether the appointment of an investigating officer, is an executory act which can be challenged by a recourse, I consider it unnecessary to express an opinion as to whether the finding of the Court in *Papanicolaou* case that the decision of the appropriate authority to refer the disciplinary matter in issue to the Public Service Commission under the proviso to section 80(a) of Law 33/67 instead of itself dealing summarily with it as provided by section 80(a) and 81(1) of the same Law, amounts to an executory

act which can be challenged by a recourse, as such matter is not in issue before me.

Before disembarking from *Papanicolaou* (No. 1) case, I wish to add that on the issue as to whether the appointment of an investigating officer is an executory act in itself or is a mere preparatory act which cannot be challenged by a recourse, such case is of useful assistance.

There is a series of cases of our Court, adopting the conclusions of the jurisprudence of the Council of State in Greece, elucidating as to the nature of an executory act. In *Papanicolaou (No.1)* (supra) Triantafyllides, J. (as he then was) at page 230, said:

> "An executory (ἐκτελεστή) act - or decision - is an act by means of which the 'will' of the Administration is made known on a given matter, and which aims at producing a legal situation concerning the citizen affected (see the Conclusions from the Jurisprudence of the Council of State in Greece 1929 - 1959 pp. 236 - 237); and the executory nature of an act is closely linked to the requirement, under paragraph 3 of Article 146, that a person can make a recourse only if an existing legitimate interest of his has been adversely and directly affected by the act complained of.
>
> Thus, acts of a 'preparatory nature' are not executory acts (see Conclusions etc., supra, p. 239); they merely prepare the ground for the making of executory acts."

In *Kolocassides v. The Republic* (1965) 3 C.L.R. 542 the Court of Appeal affirmed the decision of the first instance Court where Triantafyllides, J., as he then was, stated at p. 551:

> "An administrative act (and decision also) is only amenable within a competence, such as of this Court under Article 146, if it is executory (ἐκτελεστή) in other words it must be an act by means of which the 'will' of the administrative organ concerned has been made known in a given matter, an act which is aimed at producing a legal situation concerning the citizen affected and which entails its execution by administrative means (see Conclusions from the

Jurisprudence of the Council of State in Greece 1929 - 1959, pp. 236 - 237).

I am quite aware that in Greece this attribute of an act, which may be the subject of a recourse of annulment, is specifically stated in the relevant legislation (section 46 of Law 3713 as codified in 1961) but in my opinion such express provision was only intended to reaffirm a basic requirement of administrative law in relation to the notion of proceedings for annulment and, therefore, such requirement has to be treated as included by implication, because of the very nature of things, in our own Article 146, though it is not expressly mentioned."

(The above dictum was followed, inter alia, in *Amathus Navigation Co.* v. *The Republic* (1979) 3 C.L.R. 10, 20).

In *Chryssafinis* v. *The Republic* (supra) Pikis J., in defining an "executory act" had this to say at pp. 326, 329:

"There is no distinction in administrative law between an act and an omission not productive of legal consequences. An act yields legal consequences when it is definitive of the rights of the person affected thereby, either in the service or with regard to his financial interests. It is implicit in Article 146.1. as it has been held time and again, that for an act, decision or omission to be justifiable, it must be of an executory character, a view reinforced by para. 2 of Article 146 of the Constitution, postulating, as the prerequisite to litigation, interference with an existing legitimate right, directly resulting therefrom, adverse to the citizen affected thereby."

In the Conclusions from the Case-Law of the Council of State in Greece 1929 - 1959 at p. 237, executory acts are defined as being:

"..... ἐκεῖναι δι' ὧν δηλοῦται βούλησις διοικητικοῦ ὀργάνου, ἀποσκοποῦσα εἰς τὴν παραγωγὴν ἐννόμου ἀποτελέσματος *ἔναντι τῶν διοικουμένων καὶ συνεπαγομένη τὴν ἄμεσον ἐκτέ*λεσιν αὐτῆς διὰ τῆς διοικητικῆς ὁδοῦ. Τὸ κύριον στοιχεῖον τῆς ἐννοίας τῆς ἐκτελεστῆς πράξεως εἶναι ἄμεσος παραγωγὴ ἐννόμου ἀποτελέσματος, συνισταμένου εἰς τὴν δημιουργίαν, τροποποίησιν ἢ κατάλυσιν νομικῆς καταστάσεως, ἤτοι

δικαιωμάτων καὶ ὑποχρεώσεων διοικητικοῦ χαρακτῆρος παρὰ τοῖς διοικουμένοις".

("... these acts by which the will of the administrative organ is declared, intending the creation of a legal consequence towards the subjects involving its direct execution by administrative means. The main element of the meaning of the executory act is the direct creation of a legal result, consisting of the creation, amendment or abolition of a legal situation, i.e. rights and obligations of an administrative character of the subjects").

In the light of the above exposition of the law, I am now coming to consider whether the decision to appoint an investigating officer to carry out an investigation concerning the alleged commission by the applicant of disciplinary offences, is an executory act of its own which can be challenged by this recourse.

Under the provisions of regulation 4(1) of the Regulations of the Cyprus Ports Authority, whereby the procedure contemplated by sections 73 to 85 of the Public Service Laws 1967 to 1981 and the First and Second Schedule thereto is incorporated with the substitution of the words "competent authority" and "Public Service Commission" by the words "Board of the Authority" and "Council of Ministers" respectively, the disciplinary process before the Council of Ministers commences by the preferment of a charge which is sent to it by the Board and upon that being done, a summons is issued and served upon the General Manager calling upon him to attend the hearing, informing him of the charge against him and of his right to adduce any evidence at the hearing.

Sub-section (2) of section 82 of Law 33/67 (as modified by regulation 4(1) of Laws 38/73 to 59/77), provides as follows:

"82 .....

(2) Disciplinary proceedings before the Council of Ministers shall commence by the preferment of the charge sent by the Board of the Authority as in subsection (1) provided. Within such period as may be prescribed, and until such period is prescribed within two weeks of the date of receipt by it of the charge, the Council of Ministers

shall cause summons in the prescribed form to be issued to the officer concerned and served upon him in the prescribed manner."

The commencement of disciplinary proceedings as above bears an analogy to the commencement of criminal proceedings under the Criminal Procedure Law, Cap. 155, whereby it is provided that:

"37. Subject to the provisions of any other Law, criminal proceedings against any person shall commence by a charge preferred before a Court against such person."

It is clear from the provisions of sections 80 and 82 of Law 33/67 and Parts I, II and III of the Second Schedule thereof and the regulations contained therein that before the disciplinary proceedings are commenced against the General Manager, certain preparatory steps have to be taken. Such steps are briefly:

(a) It must be reported that the General Manager may have committed a disciplinary offence (section 80).

(b) The Board of the Authority will have to decide whether an investigation into the complaint must be carried out (section 80(b)).

(c) When a decision is taken that an investigation should be carried out, then, having regard to the fact that there is no employee of the Authority holding a higher rank to that of the General Manager, the matter has to be referred to the Council of Ministers to appoint an investigating officer in the case. (Regulation 1 of Part I of Schedule II to Law 33/67).

(d) After his appointment by the Council of Ministers the investigating officer must carry out the investigation in the manner contemplated by regulations 2–5 and, upon completion of same, to submit his report to the Board of the Authority, giving his reasons and enclosing all relative documents.

(e) Such report is submitted to the Attorney-General of the Republic (regulation 6) who has to advise the Authority as to whether a charge can be formulated

against the General Manager and, if so, he formulates the charge,

and then the Board of the Authority has to act in accordance with the provisions of section 82(1) before the matter reaches the Council of Ministers for the initiation of the disciplinary proceedings.

What I have to decide at this stage, is whether the decision for the appointment of an investigating officer by the Council of Ministers at the stage which is described under (b) and (c) above and which is the subject matter of prayer (b) in this recourse, is an executory act or decision which in itself can be challenged by a recourse or whether such act or decision is a mere preparatory act in the process of exercising disciplinary *jurisdiction over the applicant.*

I have already expounded on the definition of an executory act as emanating from the jurisprudence of the case law of the Greek Council of State and the case law of our Supreme Court. Fthenakis in his textbook on "The Law applicable to Civil Servants", after consideration of the Greek case law, expresses the view that preliminary investigation and the conclusions of the investigation are not executory acts. At page 326 of Vol. C of his book, (1967 ed.), we read the following:

"Οὐχὶ ὅμως πᾶσα πρᾶξις τῆς πειθαρχικῆς διαδικασίας εἶναι καὶ ἐκτελεστή. Αἱ προπαρασκευαστικαὶ πράξεις τῆς ἐκτελεστῆς πράξεως, οἷον ἡ ἀνάκρισις, τὸ ἐπ' αὐτῆς πόρισμα, ἡ κλῆσις εἰς ἀπολογίαν τοῦ πειθαρχικῶς διωκομένου, ἡ πειθαρχικὴ ἀγωγή, ἡ παράλειψις προσκλήσεως τοῦ ἐγκαλουμένου εἰς τὴν ἐνώπιον τοῦ πειθαρχικοῦ συμβουλίου συζήτησιν, ἐὰν ἐζήτησε τοῦτο, δὲν θεωροῦνται ἐκτελεσταὶ πράξεις".

("But not every act in the disciplinary process is executory. The acts preparatory to the executory act, such as the investigation, its conclusions, the calling upon the person against whom the disciplinary process is taken for answer, the disciplinary action, the omission to invite the accused at the hearing before the disciplinary board, if he has asked for it, are not considered executory acts").

In *Chryssafinis* v. *The Republic*, (supra), Pikis, J., by adopting such opinion came to the conclusion that the decision of the

investigating officer, after an investigation was carried out, to submit a report about the commission of the disciplinary offences complained of, was "a preparatory step in the process of exercising disciplinary jurisdiction over the applicant and, as such, not amenable to judicial review".

As mentioned earlier, the decision in *Papanicolaou (No. 1)* case may lend its assistance on this issue. As already said, in that case it was decided that the carrying out of an investigation under section 80(b) and the decision of the Minister to place the report of the investigating officer before the Council of Ministers for the commencement of disciplinary proceedings under section 82(1), were acts of a preparatory nature.

Bearing in mind the above exposition of the law and the authorities referred to, I have come to the conclusion that the decision complained of under paragraph (b) of this recourse is a preparatory act, a step aimed to elicit whether there is evidence in respect of the alleged disciplinary offences to support a charge, and, as such, not amenable to judicial review.

Therefore, the applicant's prayer under paragraph (b) fails.

Before concluding, on this issue, however, I wish to point out that the decision that an investigation should be carried out and an investigating officer be appointed for such purpose was not the decision of the respondent, but the decision taken on the 14th April, 1983, by the Board of the Authority, which was the proper authority to take such decision. What the respondent did in the present case, and this is obvious from the letter sent to the applicant in which reference is made to the reservation in regulation 1 of Part I of the Second Schedule of the Public Service Laws, was to comply with the request of the Cyprus Ports Authority to appoint an investigating officer once an investigation had been decided and there was no employee of the Authority holding a higher rank to that of the applicant.

Once the apropriate authority, which took the decision that an investigation should be carried out and an investigating officer be appointed, has not been made a party to these proceedings and its decision has not been challenged, part (b) of this recourse was bound to fail independently of the fact that, being of a preparatory nature, is not amenable by a recourse.

I come now to consider the prayer under paragraph (a) of the recourse which concerns the decision of the Council of Ministers to interdict the applicant.

Interdiction, according to the decisions in the cases of *Veis & Others* v. *The Republic* (1979) 3 C.L.R. 390 at pp. 405, 406 and *Azinas* v. *The Republic* (1980) 3 C.L.R. 510, amounts to an administrative action which has all the essential attributes of an executory decision that can be challenged by recourse under Article 146 of the Constitution, and which, while it lasts, affects adversely and directly existing legitimate interests of an applicant in the sense of paragraph 2 of the said Article 146. Therefore, the applicant in the present recourse is entitled to challenge such decision by recourse.

The first three points of law raised by counsel for the applicant on this issue concern the interpretation and/or application of the law. I shall deal with such points in the order presented by counsel for the applicant.

1. *Whether the interdiction of the applicant is possible under the law.*

Counsel for applicant has argued that, according to the cases of *Veis* and *Azinas* (supra), interdiction is not a matter relating either to disciplinary responsibility or disciplinary process but a distinct measure of the administration and, as such, does not form part of the disciplinary process. Sections 73–85 of Law 33/67 are incorporated by regulation 4 in so far as same relate to disciplinary responsibility (πειθαρχική εύθύνη) and disciplinary process (πειθαρχική δίωξις) but not in respect of interdiction which is not a matter related to disciplinary responsibility or disciplinary process. Therefore, section 84 of Law 33/67, which makes provision for the interdiction of Public Officers, does not fall and cannot be deemed as falling within the provisions of regulation 4.

Counsel for respondent, on the other hand, argued that the Cyprus Ports Authority Laws 1973 to 1977 by virtue of section 1 (2) thereof and regulation 4(1) have brought into itself by reference the whole of Part VII of Law 33/67 consisting of sections 73–85 and has incorporated these sections in such a manner as to apply mutatis mutandis to the General Manager.

Furthermore, the ordinary meaning of the words of regulation 4(1) do not purport to limit in any way the application of sections 73–85; and, lastly, that the cases of *Veis* and *Azinas* were decided in the sense of paragraph 2 of Article 146 of the Constitution only and in order to indicate that interdiction amounts to administrative action which has all the essential attributes of an executory decision which can be challenged by recourse under Article 146 of the Constitution, and, therefore, have no application to the present case as being distinguishable.

In interpreting a law, regard must be given to its wording which expresses also the intention of the legislator. A reading of regulation 4(1) conveys the meaning that the legislator, instead of re-writing the provisions of sections 73–85 of Part VII of Law 33/67, under the heading "Disciplinary Code", decided simply to incorporate such provisions by reference. It is clear that sections 73–85 of Law 33/67, together with the first and Second Schedules of that Law, have been incorporated with the only qualification the substitution of the terms "appropriate authority" and "Public Service Commission" with the terms "Board" and "Council of Ministers" respectively. Therefore, all sections of Law 33/67 between 73 and 85, subject to the above qualification, must be read in regulation 4(1). If there was any intention to exclude any specific section, such intention should have been specifically expressed, which is not the case here, where all the said sections are expressly incorporated.

The words "with regard to the disciplinary responsibility and disciplinary process of the General Manager" do not in any way purport to exclude the application of section 84 of Law 33/67. Interdiction, and this is the effect of *Veis* and *Azinas* cases, is neither a disciplinary punishment nor does it form part of the disciplinary process in its strict sense. It is a measure resorted to by the administration when a disciplinary investigation is ordered, in order to facilitate the task of the investigation. In *Dalitis* v. *The Republic* (1970) 3 C.L.R. 205, at p. 209, Loizou, J., in considering the object of interdiction, had this to say:

> "The object of interdiction is that a suspected offender should cease to exercise the powers and functions of his office pending the investigation into the alleged offence

and in case such investigation results in proceedings against him until the final disposal of such proceedings.

In Law 33/67 interdiction comes under the general heading (of Part VII of the Law) "Disciplinary Code" despite the fact that it does not form part of the disciplinary process, because it is an administrative measure which comes into play if and when a disciplinary investigation is ordered.

In the result, the contention of counsel for the applicant that the interdiction of the applicant is not possible under the law, fails.

2. *Ultra vires of Regulation* 4.

Section 2 defines the word "ὑπάλληλος" (officer) as including also the General Manager. By this definition it is obvious that, unless it is otherwise expressly stated in any other section of the Law, the meaning will be the same throughout the Law.

Starting with section 18, special provisions are made therein regarding the appointment, dismissal and participation of the General Manager at the meeting of the Board. No mention is made that the General Manager is excluded from the definition of "officer" under section 2. It merely makes provision about his appointment which has to be effected by a different procedure than that of the remaining officers and that his dismissal is subject to the approval by the Council of Ministers.

I come next to section 19. Sub-section (1) of section 19 provides that:-

> "Without prejudice to the provisions of subsection (1) of section 18 the Authority may employ such officers as may be necessary, for the execution of its functions".

This subsection does not give a different meaning to the term "officer" but it simply makes provision for the employment of the remaining officers, other than the General Manager for whose appointment special provision is made under section 18(1).

In subsection (2) of section 19, which empowers the Authority to make regulations regarding the conditions of service of its officers, no intention is manifested that the General Manager

is excluded from such provisions. The enumeration of the matters for which regulations may be made does not change the situation. Irrespective of the fact that the power for appointment of the General Manager is vested in the Council of Ministers and when a decision is taken for his dismissal it has to be approved by the Council of Ministers, there is no restriction to the power of the Authority to make regulations providing for the dismissal, discipline, leave, medical and social benefits, etc. of the General Manager as one of its "officers" under the definition of section 2 of the relative laws.

Therefore, the contention of counsel for the applicant that regulation 4 is ultra vires to section 19(2) of Law 38/73, is untenable.

3. *Whether section 19 of the Interpretation Law, Cap. 1, is applicable.*

Counsel for applicant contended that in the absence of any provision in the law, once the General Manager is appointed, there is no organ vested with the power to dismiss him. The General Manager, counsel added, is appointed by the Council of Ministers under the provisions of section 18(1), but in view of the provisions of section 18(2) he cannot be dismissed by the Council of Ministers. The only power vested in the Council of Ministers in that respect, is that of giving its approval for his dismissal. Since the Cyprus Ports Authority does not exercise any disciplinary control over the General Manager and cannot institute disciplinary proceedings against him, it is obvious, counsel contended, that the Authority lacks also any power to dismiss him. Consequently, there is a legislative lacuna as to which is the competent organ to dismiss applicant from his post as General Manager of the Authority. Counsel went on to submit that the provisions of section 19 of the Interpretation Law, Cap. 1 construed in *Azinas* v. *The Republic* (*supra*) as enabling the appointing organ to interdict an officer, have no application in the present case.

Section 19 of Cap. 1 to which reference has been made, reads as follows:-

> "Where any Law confers upon any person or public authority power to make appointments to any office or place the

power shall be construed as including the power to determine any such appointment and to suspend any person appointed, and to re-appoint or reinstate him, and to appoint another person temporarily in the place of any person so suspended, and to appoint another person to fill any vacancy in the office or place arising from any other cause:

Provided that where the power of the person or public authority to make any such appointment is only exercisable upon the recommendation or subject to the approval, consent or concurrence of some other person or authority the power of determination or suspension shall, unless the contrary intention appears, only be exercisable upon the recommendation or subject to the approval, consent or concurrence of that other person or authority".

In the *Azinas* case (supra), in dealing with the provisions of section 19 of Cap. 1, I found that in cases where there was no provision for the interdiction or dismissal of an officer in the law by virtue of which the appointment was made, such law should be read in conjunction with section 19 of the Interpretation Law, Cap. 1 and be construed accordingly.

At this stage of the proceedings, I am not concerned with the dismissal of the General Manager, as such question is not in issue in the present proceedings. The only matter posing for consideration under this prayer, is the interdiction of the applicant and not his dismissal.

As I have already found, the General Manager as an "officer" of the Authority can be interdicted under section 84(1) of Law 33/67, which is one of the sections incorporated in regulation 4(1) of the Regulations of the Authority, made under section 19(2) of the Cyprus Ports Authority Laws 1973 to 1977, by the appropriate organ entrusted with such power, such organ being the Council of Ministers. Since I am only concerned now with the interdiction of the applicant for which provision is made in the law, as above, I find that section 19 of Cap. 1 is not applicable in this respect in the present case.

4. *Lack of due reasoning.*

It has been the contention of counsel for the applicant that

the sub judice decision is not duly reasoned. The invocatent of public interest by itself, counsel submitted, is not a sufficiion or proper reasoning and, in support of his submission, he made reference to the case of *Kazamias* v. *The Republic* (1982) 3 C.L.R. 239. In the *Kazamias* case the services of the Director-General of the Ministry of Communications and Works were terminated by the Council of Ministers under sections 6(f) and 7 of the Pensions Law, Cap. 311 (as amended), in the public interest on the ground of "unbecoming conduct in public which offended basically the very subsistance of the State and the proper and unfettered functioning of the State and its Public Service". No explanation or particulars of such allegations were given to the applicant though he repeatedly asked for them. At pages 283 and 284, I said the following:-

> " I agree with submission of learned counsel for applicant that such decision is not properly or sufficiently reasoned. Such decision is overshadowed by a cloud of generalities invoking allegations of unbecoming public conduct on the part of the applicant of such nature as to make it necessary in the public interest to impose upon him the ultimate punishment of terminating his permanent appointment with the Government service, without mentioning particulars of such allegations, or the evidence on which the Council of Ministers relied, or any surrounding circumstances and also by failing to specify (ἐξειδίκευση) the matters of public interest involved. The reasons mentioned in the decision are not such as to enable in the first instance, the person concerned, and the Court on review, to ascertain whether the decision is well founded in fact and in law".

Kazamias case is distinguishable from the present case. In the present case there is not a mere invocation of the public interest in abstracto, but from the voluminous material before me, it is abundantly clear that there is sufficient reasoning why the interdiction of the applicant was considered necessary in the public interest. I find it unnecessary to repeat once more all the facts of the case which have been mentioned at some length earlier in this judgment. It is evidence from such facts that among the numerous reasons which were taken into consideration by the respondent to interdict the applicant in the public interest were:

(a) The fact that there were accusations against him for probable commission of serious disciplinary offences;

(b) this necessitased the initiation of an investigation by the Board of the Authority and the appointment of an investigating officer by the Council of Ministers at the request of the Board of the Authority, in the circumstances already explained;

(c) the unanimous recommendation of the Board of the Authority to the Council of Ministers that, for the purpose of the unobstructed and unprejudiced carrying out of the investigation and also due to the serious nature of the offences which the applicant might have committed, his interdiction pending the conclusion of the investigation was necessary for the public interest which was adopted by the respondent;

(d) the fact that the applicant was the General Manager of the Authority and there was no other officer superior in rank over him, a fact which necessitated the invocation of the power of the Council of Ministers to appoint an investigating officer from outside the personnel of the Authority.

It has been held by this Court time and again that the reasoning in a case may be supplemented by the material before the Court (see, inter alia, the cases of *Fournia Ltd.* v. *Republic* (1983) 3 C.L.R. 262, *Petrides* v. *Republic* (1983) 3 C.L.R. 216, *Hjiloannou* v. *Republic* (1983) 3 C.L.R. 536, *Marangos* v. *Republic* (1983) 3 C.L.R. 682, *Hadjicleanthous* v. *Republic* (1983) 3 C.L.R. 810).

In the present case I have come to the conclusion that, from the voluminous material before me, there is sufficient reasoning why the respondent has come to the conclusion that, in the circumstances, the interdiction of the applicant, pending the conclusion of the investigation, was considered as necessary in the public interest.

For all the above reasons, this recourse fails but, in the circumstances, I make no order for costs.

Recourse dismissed. No order as to costs.