

1984 March 15

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

NICOS GRIGOROPOULLOS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
DISTRICT POLICE COMMANDER OF LARNACA,

Respondent.

(Case No. 544/83).

5 *Illegal orders—Disobedience to—Effect—Policeman—Interdiction pending disciplinary proceedings for neglect of duty—Alleged neglect of duty connected with escape of 4 aliens from police detention—Said detention illegal and equally illegal the instructions to endorse it—Policeman had a duty to disregard them—And consequently no charge of neglect of duty could be grounded—Interdiction set aside.*

Costs—Successful recourse for annulment—Respondents ordered to pay part of the costs of applicant.

10 The applicant, a Police Sergeant, was interdicted following the commencement of disciplinary proceedings against him for neglect of duty. The disciplinary offence examined against him arose of and was connected with the detention and escape of four
15 aliens from police custody, on 28.11.83. The charged against him was that he showed neglect in his duty to oversee or ensure the incarceration of the detainees. The detention of the four aliens, however, for whose escape he was accused of neglect of duty was unauthorized and illegal.

Upon a recourse against the validity of the interdiction:

20 *Held*, that in the absence of judicial sanction, as provided in Article 11.2 of the Constitution, the detention of the four aliens was illegal; that equally illegal were instructions designed to

endorse the illegal detention; that they could be ignored with immunity; that, in fact, policemen had a duty to disregard them and they could not become parties to an illegal detention; that, consequently, no charge of neglect of duty could be grounded upon alleged disobedience of illegal orders; that inexorably, the premises of the accusation of neglect of duty levelled against the applicant, collapse; that the reports that gave rise to the complaint and led to his interdiction, did not disclose a case, prima facie or otherwise, of neglect of duty; and that, consequently, the decision to interdict him was ill-founded and ought to be set aside.

Held. further, that the respondents should pay £125 towards the costs of the applicant.

Per Pikis, J.:

The rejection of superior orders as a defence is a hedge against arbitrary authority safeguarding an unqualified spirit of respect for the laws. In the last analysis, it is expected of men to reject illegal superior orders and guard the state of legality that should obtain in every civilised society; for, if illegal, superior orders are obeyed, they open the way to lawlessness. It is, after all, not only difficult but impossible to reconcile any doctrine recognising superior orders as a defence and the fundamental principle of supremacy of the law a prerequisite for sustaining the rule of law.

Sub judice decision annulled.

Cases referred to:

- Veis and Others v. Republic* (1979) 3 C.L.R. 390;
Pàyiatas v. Republic (1984) 3 C.L.R. 165;
Ioannides v. Republic (1972) 3 C.L.R. 318;
Demetriou and Another v. Anastassiou (*Larnaca Action No.* 1095/75 delivered on 7.1.78);
Anastassiou v. Demetriou and Another (1981) 1 C.L.R. 589;
R. v. Metropolitan Police Commissioner [1968] 1 All E.R. 763;
Fisher v. Aldham Corpn. [1930] All E.R. Rep. 96;
A.G. of New South Wales v. Perpetual Trustee Co. Ltd. [1955] 1 All E.R. 846.

Recourse.

Recourse against the decision of the respondent to interdict the applicant pending completion of investigation into a case of neglect of duty.

5 L. *Papaphilippou*, for the applicant.

 A. *Vassiliades*, for the respondent.

Cur. adv. vult.

 PIKIS J. read the following judgment. Applicant contests the validity of the decision to interdict him, taken by the Larnaca
10 Divisional Police Commander on 2.12.83, suspending him from duty pending completion of investigation into a case of neglect of duty. During interdiction, his emoluments were cut down to two thirds of his normal remuneration. The disciplinary offence examined against him arose of and was connected with the de-
15 tention and escape of four aliens from police custody, on 28.11.83. The charge against him was that he showed neglect in his duty to oversee or ensure the incarceration of the detainees. Notwithstanding the inconclusive character of interdiction and the absence of any permanent repercussions on the status of the
20 officer in the Force, it is, nonetheless, an executory act because of its immediate legal consequences resulting in the removal, be it temporarily, of the officer from the Force and the financial repercussions consequent thereupon. So, although interdiction is an incident of a preparatory act, that is, the investigation, it is,
25 because of its consequences, detachable therefrom and justiciable as an independent executory act (see, *Veis And Others v. Republic* (1979) 3 C.L.R. 390; *Payiatis v. Republic*, delivered on 2.2.84 - not yet reported)*.

 The letter informing the applicant of his interdiction merely
30 records the decision. It says nothing of the facts giving rise to it or the reasons warranting his suspension. Interdiction is not an automatic consequence of investigation into a disciplinary offence. It is a discretionary power, exercisable, like every discretionary power, in the interest of promotion of the purpose
35 for which it is given. Power to interdict vests, in virtue of regulation 23 of the Police Disciplinary Regulations, in the Divisional Police Commander, subject to the procedure specified therein. The principal object of the power to interdict is, to ensure the

* Now reported in (1984) 3 C.L.R. 165.

unobstructed investigation of a case. Temporary suspension from the Force is justified whenever the removal of the officer from the rank is judged expedient in the interests of the efficacy of the investigation.

Failure to specify the reasons leading to a decision in the notification of the decision, is not fatal. The reasoning may be supplemented and, in a proper case, extracted from the file of the case. The material in the file of the case, preceding the interdiction, consists of two reports prepared, the one by P. Polydorou, Assistant Chief of Police (exhibit 1) and, the other, by Chief Inspector Spyrou (exhibit 2). The reports review the facts relevant to the arrest of the four aliens, their detention, the legal and factual circumstances bearing on their detention, as well as their escape. Blame is thrown on some officers, including the applicant - a police sergeant - for failure to prevent or contain the escape of the detainees. In face of the facts disclosed by the reports, counsel for the applicant submitted that not only they reveal no reasons necessitating the interdiction of the applicant, but demolish in themselves every allegation of neglect of duty on the part of the applicant. For, the detention was illegal and no one had a duty to oversee its continuance. It appears from the reports that the detainees were first arrested and later remanded in custody for the possession and carrying of firearms. Although the order for their remand expired and the case against them was closed, they were kept in custody, in anticipation of arrangements for their departure from Cyprus. No formal deportation was contemplated and no order for their deportation was issued*. Their continued detention had no lawful authority in law and was patently illegal. The oral evidence before the Court, coming from Inspector N. Parpas and Chief Inspector Kouis, confirms the facts relevant to detention, outlined in the reports. There can be no doubt. The detention of the four aliens, for whose escape the applicant was accused of neglect of duty, was unauthorised and illegal.

Counsel for the Republic acknowledged the police had no

* (See, Article 11(f) of the Constitution, and s.14 of the *Aliens and Immigration Law*—Cap. 105.

For a discussion of the circumstances under which detention, for purposes of deportation is legitimised, see *Fawcett—Application of the European Convention on Human Rights*, pp. 86 and 87—*Ioannides v. Republic* (1972) 3 C.L.R. 318).

authority to detain the four aliens. The crux of the matter is whether the Divisional Police Commander, or any other police officer, had a right, notwithstanding the lack of authority for the detention of the four aliens, to issue instructions for their incarceration and demand of his subordinates, as a matter of duty, to keep them in custody or oversee their detention. Carry-
5 ing the argument a step further, if the Divisional Police Commander had no right to command his subordinates to enforce the detention of the four aliens, no duty could be cast upon any
10 policeman to observe, enforce or implement such orders. The orders would be illegal. No one is under duty to heed, obey, or enforce illegal orders.

A policeman is an instrument of the law. In the discharge of his duties, he embodies the authority of the law. Who defines
15 his duties? His duties are defined by the Police Law, Regulations made thereunder and residually by the common law. So long as a command of his superior emanates from the law, he is dutybound to implement it, to carry it out as effectively as he can, in vindication of the law. But no superior can order him
20 to do something that the law does not permit. More so, something that the law prohibits. Superior orders are not, in themselves, a source of legal authority. Their validity is directly dependent on the lawfulness of their origin. If they are issued outside the bounds of the law, they have no force and, if they
25 direct the doing of something that is illegal, not only they can be ignored at will, but they must be ignored as a matter of duty.

Superior Orders: In *Eleni Demetriou And Another v. Anastassiou**, I examined at length the implications of superior orders and the duty of those to whom they are addressed. The
30 subject was examined in connection with the coup d'etat but the principles adopted and applied are of universal application. They turn on the supremacy of the law. The imprint of higher authority does not settle a policeman's or anybody's duties. Only the law defines rights and duties. Duties detailed in the
35 course of application of the law, must be carried out minutely. Otherwise, superior orders are valueless as a source of legal authority. I put the matter in this perspective:

“The rejection of superior orders as a defence is a hedge

* Action 1095/75, Larnaca District Court—Judgment delivered on 7.1.1978).

against arbitrary authority safeguarding an unqualified spirit of respect for the laws. In the last analysis, it is expected of men to reject illegal superior orders and guard the state of legality that should obtain in every civilised society; for, if illegal, superior orders are obeyed, they open the way to lawlessness. It is, after all, not only difficult but impossible to reconcile any doctrine recognising superior orders as a defence and the fundamental principle of supremacy of the law, a prerequisite for sustaining the rule of law".

(p.10 of judgment)

On appeal, the Supreme Court adopted the approach of the Court of first instance, espoused its reasoning and largely reproduced its text, authoritatively settling the invalidity of superior orders, as a legal norm—See, *Anastassiou v. Demetriou And Another* (1981) 1 C.L.R. 589.

The position of a policeman in law, was the subject of weighty pronouncements in *R. v. Metropolitan Police Commissioner* [1968] 1 All E.R. 763. Especially instructive is the judgment of *Lord Denning, M.R.*, who described, if I may say so with respect, the position of a policeman in terms that is difficult to rival. The policeman, he said, is not the servant of anyone, save of the law itself. No one can tell him, no matter how high he stands, to do anything outside the law. Any such directions must be ignored. The policeman is himself the agent of the law, an expression of its authority, the guardian of the peaceable objects of society. In the words of Lord Denning, "he is answerable to the law and to the law alone" (see, also, *Fisher v. Aldham Corpn.* [1930] All E.R. Rep., 96 and, *A-G for New Southwales v. Perpetual Trustee Co. (Ltd.)* [1955] 1 All E.R. 846). I find myself in total agreement with the principle expounded in *R. v. Metropolitan Police Commissioner* and, share the judicial sentiment behind the judgment. The sovereignty of the people will be destroyed if anyone other than its representatives has a right to frame or shape legal commands.

In the absence of judicial sanction, as provided in Article 11.2 of the Constitution, the detention of the four aliens was illegal. Equally illegal were instructions designed to endorse the illegal detention. They could be ignored with immunity.

In fact, policemen had a duty to disregard them. They could not become parties to an illegal detention. Consequently, no charge of neglect of duty could be grounded upon alleged disobedience of illegal orders. That the Police were trying to cope with a difficult situation, does not alter the complexion of their acts. Illegal action does not become legal on account of benevolent motives. Inexorably, the premises of the accusation of neglect of duty levelled against the applicant, collapse. The reports that gave rise to the complaint and led to his interdiction, did not disclose a case, prima facie or otherwise, of neglect of duty. Consequently, the decision to interdict him was ill-founded and ought to be set aside.

I have purposely refrained from examining the oral evidence before me, bearing on the alleged complaint of neglect of duty. Such evidence would be relevant, if a case of neglect of duty was disclosed. If such had been the case, this would not be the proper stage of evaluating it. I merely notice that from the evidence of officers Parpas and Kouis, no fault whatever can be attributed on the applicant. I shall not probe the issue further for, as already decided, the whole case against the applicant is ill-founded, as well as the interdiction that followed it. The sub judice decision is hereby annulled.

Counsel for the applicant invited the Court to make an order for costs in favour of his client, not least because of the disbursements incurred for the vindication of his rights. His out-of-pocket expenses alone, amounted to £57.-. I remind that the case was adjourned more than once in order to afford an opportunity to the respondents to defend the proceedings. In the exercise of my discretion, I shall adjudge the respondents to pay £125.- towards costs of the applicant.

*Sub judice decision annulled.
Order for costs as above.*