1984 August 21

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS CHRISTODOULOU,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTER OF INTERIOR,

Respondents.

(*Case No.* 30/82)

Res judicata—Principle of, in the area of administrative law.

Disciplinary offences—Disciplinary punishment—Choice and length of —Exclusively within discretion of the appropriate disciplinary body.

Disciplinary and criminal proceedings—Not mutually exclusive—They can be pursued independently of one another.

Natural Justice—Disciplinary proceedings—Right to an oral hearing—Accrues only if specifically postulated by a law.

The Council of Ministers dismissed applicant's appeal against the decision of a disciplinary Committee, set up under regulation 32 of the Police Disciplinary Regulations, and confirmed by the Minister of Interior under regulation 36; and hence this recourse where the following issues arose for consideration

(a) Whether following the annulment of the first decision of the Council of Ministers by the Supreme Court the retrial of the applicant constituted infringement of the rule of *res judicata*.

(b) Whether the sentence of dismissal was excessive.

(c) Whether there was lack of jurisdiction to try the disciplinary offence preferred against the applicant because of its ostensible criminal nature.

(d) Whether, given that applicant submitted in writing his reasons in support of his appeal, the Council of Ministers had a duty to afford him an oral hearing.

Held, (1) that it was not only open to the Council of Ministers to deal with the matter afresh, but mandatory for them so to do in view of the decision of the Court (see Article 146.4(a) of the Constitution and *Pieris v. Republic* (1983) 3 C.L.R. 1054 on the principles of res judicata in the area of administrative Law).

(2) That the choice of sentence and the length of it is exclusively cast to the discretion of the appropriate disciplinary body.

(3) That it is a settled principle of law that disciplinary and criminal proceedings are not mutually exclusive; they are designed to serve different purposes and objects and can be pursued independently of one another.

(4) That the hearing of a disciplinary offence need not be attuned to the patern envisaged by the Criminal Procedure Law for the hearing of a criminal case; a right to an oral hearing accrues only if specifically postulated by a law; that in the absence of any suggestion that applicant was in any way hindered from putting forward his case before the Council of Ministers it must be concluded that sufficient opportunity was given to him to defend himself; accordingly the recourse must fail.

Application dismissed.

Cases referred to:

Pieris v. Republic (1983) 3 C.L.R. 1054;

Papacleovoulou v. Republic (1982) 3 C.L.R. 187;

Platritis v. Republic (1969) 3 C.L.R. 366;

Christofides v. CY.T.A. (1979) 3 C.L.R. 99;

Solomou v. Republic (1984) 3 C.L.R. 533;

Christodoulou v. Disciplinary Board (1983) 1 C.L.R. 999;

Petrou v. Republic (1980) 3 C.L.R. 203;

Bushell v. Secretary of State [1980] 2 All E.R. 608 (H.L.);

Payne v. Lord Harris [1981] 2 All E.R. 842;

Re Pergamon Press Ltd. [1970] 3 All E.R. 535 at p. 542.

Recourse.

Recourse against the dismissal of applicant's appeal against the decision of the disciplinary committee, set up under reg. 32 of the Police Disciplinary Regulations and confirmed by the Minister of Interior under reg. 36 whereby he had been dismissed for improper conduct.

A. Eftychiou, for the applicant.

M. Florentzos, Senior Counsel of the Republic, for the respondents.

Cur. adv. vult.

PIKIS J. read the following judgment. The validity of the decision of the Council of Ministers, of 22.10.81, dismissing applicant's appeal against the decision of a disciplinary committee set up under reg. 32 of the Police Disciplinary Regulations and confirmed by the Minister of the Interior under reg. 36 of the same Code, is the subject we must resolve in these proceedings.

The decision was challenged on several grounds but, as counsel acknowledged, following the submission of written addresses, one is the central issue - namely, the adequacy of the opportunity afforded by the Council of Ministers to the applicant to be heard in the matter of his appeal to the Council of Ministers by way of hierarchical review of the conviction and sentence imposed by the aforementioned subordinate organs. The essence of the case for the applicant in this respect is that the Council of Ministers acted in breach of the rules of natural justice, by failing to afford an oral hearing. For the respondents it was submitted, the rule of natural justice that no one should be condemned without being given an opportunity to be heard. that finds expression in Article 12.5 of the Constitution, was properly observed by inviting the applicant to submit, in writing. his reasons in support of the appeal, to which he responded, somewhat belately, by a statement submitted on his behalf by his counsel on 28.9.81.

The other grounds, faintly pursued in support of the recourse. were -

(a) Infringement of the rule of res judicata by retrying the applicant, following the annulment of the first decision of the Council of Ministers on the same matter, by

the decision of the Supreme Court in the exercise of its revisional jurisdiction in Recourse No. 270/80, delivered on 30.5.80.

The short answer to this contention is that it was not only open to the Council of Ministers to deal with the matter afresh, but mandatory for them so to do in view of the decision of the Court. In accordance with Article 146.4(a), it was legally open to the Court, in the first place, to annul the composite decision leading to the dismissal of the applicant, only in part, by discharging the final step in the process. Res judicata operates the other way, by making impossible a fresh review of prior steps that were in issue in the first recourse, notably, the legality of the decision of the disciplinary committee and its subsequent affirmation by the Minister (the principles of res judicata, in the area of administrative law, were discussed in *Pieris v. Republic* (1983) 3 C.L.R. 1054).

(b) The severity of the sentence imposed, allegedly excessive in the light of the facts of the case.

Applicant had been dismissed for improper conduct contrary to reg. 7 of the Police Disciplinary Regulations 1958 - 1977, a disciplinary offence entailing, at the maximum, dismissal, in accordance with reg. 35 of the aforementioned disciplinary Code. This submission is, like the previous one, ill premised in view of the principle of administrative law that casts the choice of sentence, and the length of it, exclusively to the discretion of the appropriate disciplinary body. I shall not elaborate on the reasons behind this principle, explained in *Papacleovoulou v. Republic* (1982) 3 C.L.R. 187. I need only mention that this rule is an indisputable principle of administrative law - See, inter alia, *Platritis v. Republic* (1969) 3 C.L.R. 366; *Christophides v. CY.T.A.* (1979) 3 C.L.R. 99; *Solomou v. Republic* (1984) 3 C.L.R. 533.

(c) Lack of jurisdiction to try the disciplinary offence

preferred against the applicant, because of its ostensible criminal nature.

The argument is that it was incompetent to try the applicant disciplinarily, once the offence constituted on its face a crime as well. Like the submissions under (a) and (b), it is unsustainable; it is a settled principle of law that disciplinary and criminal proceedings are not mutually exclusive. They are designed to serve different purposes and objects and can be pursued independently of one another. The decision of the Full Bench in *Christodoulou v. Disciplinary Board* (1983) 1 C.L.R. 999, is explicit on the matter.

Having dealt with the less consequential aspects of the case, we shall revert to the basic issue revolving round the sufficiency of the opportunity afforded to the applicant to be heard, with particular reference to the duty of the Council of Ministers, if any, to afford him an oral hearing. Malachtos, J., decided otherwise in *Petrou v. Republic* (1980) 3 C.L.R. 203.

As pointed out in *Papacleovoulou v. Republic* (1982) 3 C.L.R. 187, the hearing of a disciplinary offence need not be attuned to the pattern envisaged by the Criminal Procedure Law for the hearing of a criminal case. The same conclusion is supported by the above decision of the Supreme Court. A right to an oral hearing accrues only if specifically postulated by a law*. In England, too, the Courts lean against judicialisation of administrative proceedings - See, *Bushell v. Secretary of State* [1980] 2 All E.R. 608 (H.L.). In the absence of any suggestion that applicant was in any way hindered from putting forward his case before the Council of Ministers, we must conclude that sufficient opportunity was given him to defend himself**. Upon proper appreciation of this element of the case, the recourse of the applicant is doomed to failure. That his defence, as well as the remaining papers of the case were processed to the Council of Ministers by

* See, *Stassinopoulos—The Right of Defence Before Administrative Bodies*—1974, p. 215.

** At the root of natural justice lies the duty to act fairly—*Payne* v. *Lord Harris* [1981] 2 All E.R. 842 (C.A.). And as human situations are apt to vary infinitely flexibility in procedure is all important, as *Sachs, L.J.* observed in *Re Pergamon Press Ltd.* [1970] 3 All E.R. 535, 542.

the Minister of Interior, is no ground for complaint. The Minister of the Interior, it is noted, refrained from participating in the deliberations and decision of the Council of Ministers, as he should. Had he taken part, the decision might be vulnerable to be set aside for bias.

The recourse fails. It is dismissed. Let there be no order as to costs.

Appeal dismissed. No order as to costs.