1986 October 11

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

PETROS MATSAS,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 43/84).

Constitutional Law—Disciplinary proceedings against Public Officers—Alleged conduct constituting both a criminal and a disciplinary offence—No provision in the Constitution making the institution of criminal proceedings a condition precedent to the institution of disciplinary proceedings—Public Service Commission—It is neither a Judicial Committee nor an Exceptional Court in the sense of Article 30 of the Constitution—Delay in prosecuting—Deprecated—In the circumstances of this case the delay did not amount to any violation of the applicant's rights under the Constitution—Constitution, Articles 12, 13 and 30—Article 13 in no way related to the case in hand.

Public Officers—Disciplinary proceedings—Independence of such proceedings from Criminal Proceedings—The only nexus between them are those provided in sections 77 and 78 of the Public Service Law—Section 77 does not prevent institution of disciplinary proceedings without instituting Criminal proceedings first.

Administrative Law— Factual basis of an administrative act or decision—Judicial control—Principles applicable.

The applicant, who was at the time the Director of Psychiatric Services, was found guilty by the respondent

Commission of disciplinary offences contained in six counts and as a result he was punished by demotion to the immediately lower post of Specialist in the Psychiatric Services. The particulars of the first three counts on which he was found guilty were that he committed on three different days in October 1977 an act of indecent assault on Assistant Nurse, namely Maria Antoniadou, the particulars of the next two counts on which he was found guilty were acts of indecent assault of Chloe Kimissi and Xenia Boyadji, respectively, both daily paid Assistant Nurses and the particulars of the last count were for indecent and immoral proposals to the said Xenia Boyadji.

As a result the applicant filed the present recourse complaining of violations of Articles 12, 13 and 30 of the Constitution and of the findings of fact, made by the respondent Commission and the conclusions drawn therefrom.

In support of his argument as regards violations of Article 30 of the Constitution counsel of the applicant invoked two aspects of the case. The first is the delay in prosecuting the first three counts coupled with the fact that the applicant was informed for the first time about them upon the commencement of the disciplinary investigations. The second is that the alleged conduct of the applicant constituted criminal offences for which the applicant was not prosecuted before a Court of Law before which all the safeguards of procedure and the law of evidence would have been afforded to him including those in Article 12 of the Constitution. He was instead prosecuted in respect of the disciplinary aspect of his alleged conduct before the respondent Commission which was claimed to be in such circumstances a non-competent Court. He further argued in respect of this aspect that the applicant was denied his right to fair and public hearing within a reasonable time by an independent impartial and competent Court established by Law, the respondent Commission not being such a Court, but a Judicial Committee or Exceptional Court prohibited by Article 30.1 of the Constitution.

Held, dismissing the recourse: (1) Article 12 of the

Constitution lays down the minimum rights of an accused person in criminal trials. The arguments advanced as regards its violation do not refer to infringement during the hearing of the case by the respondent Commission of any of its several provisions. Article 13 of the Constitution has no relation whatsoever with this case.

The hearing of the case before the respondent Commission proceeded as provided by paragraph 3 of part III of the First Schedule to the Public Service Law as nearly as could be in the same manner as the hearing of a criminal case in a summary trial.

In the absence of a reasonable excuse the delay in prosecutions must be avoided, but in no way it can be taken in the circumstances of this case to amount to a violation of any of the Articles of the Constitution referred to by applicant.

The independence of disciplinary proceedings from criminal proceedings has always been recognised and the only nexus that exists under the Public Service Law are those to be found in sections 77 and 78 of the said law. From the principle of such independence stems the discretionary power of the administration to commit or not before a Criminal Court the person, who has committed a disciplinary offence and the rule that non bis in item does not apply and consequently there may be imposed a sentence both by the criminal and the disciplinary Judge (A passage from Fthenakis,, System of Civil Service Law, 1st Ed. Vol. C p. 230 was cited with approval). The respondent Commission, having been established by law with competence to try disciplinary offences is neither a Judicial Committee nor an Exceptional Court. There is no principle of law or provision in the Constitution that makes it imperative that where conduct constitutes both a criminal offence and a disciplinary offence, the prosecution of the former before a Criminal Court is a condition precedent to the institution of disciplinary proceedings. Section 77 of the Public Service Law, which prohibits the institution of disciplinary proceedings upon any ground involved in pending criminal proceedings, does

not prevent the institution of disciplinary proceedings without instituting criminal proceedings first.

(2) The legal principles governing the interference of an administrative Court with the determination of the factual basis of an administrative act or decision have been dealt with in the case of the *Republic* v. *Lefkos Georghiades* (1972) 3 C.L.R. 594 at pp. 691-695. In this case the respondent Commission did not exceed the extreme boundaries of its discretion.

Recourse dismissed.
No order as to costs.

Cases referred to:

The Republic v. *Georghiades* (1972) 3 C.L.R. 594;

Decisions 1080/83, 295/83 and 705/84 of the Greek Council of State.

Recourse.

Recourse against the decision of the respondent whereby applicant was found guilty on various disciplinary offences and the punishment of demotion was passed on him.

E. Efstathiou, for the applicant.

R. Gavrielides, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks a declaration of the Court that "the decision of the respondent Commission given for each count on the charge-sheet for the disciplinary offences for which he was charged with the exception of the fourth, fifth and sixth counts, delivered on the 11th November 1983, by which he was found guilty and/or in consequence thereof, the imposition on him of the sentence by their decision of the 25th November, 1983, is null and void and with no effect whatsoever."

The facts of the case are as follows:

The Director-General of the Ministry of Health by letter dated the 1st February 1983, informed the respondent Commission that the Council of Ministers by its decision No. 22.701 and dated 20th January 1983, nominated Mr. Claudius Antoniades, Senior Counsel of the Republic as investigating officer to conduct the investigation into charges of improper behaviour on the applicant, as a Director of the Psychiatric Services. By the same letter the Director-General mentioned that the approriate Authority was of the view that there did not arise a question of the applicant being interdicted from duty as he was on sick-leave of a long duration (Appendix 1). The respondent Commission at its meeting of the 16th February 1983, after examining all material before it agreed that there was no need for such interdiction.

Ultimately as a result of the investigations carried out there were referred against the applicant the charges for which he stook trial in accordance with the provisions of the Public Service Laws, 1967-1983.

The respondent Commission at its meeting of the 23rd April, 1983, decided to proceed with the disciplinary procedure against the applicant and fixed the case for hearing on the 3rd May 1983, notifying the parties accordingly.

On the 5th May, 1983, after studying the whole problem and in particular the fact that the applicant was the Head of the Department and the disciplinary offences for which he was charged appeared to have been committed against members of his staff. The respondent Commission decided that it was in the public interest to interdict him as from the 6th May, 1983, until, the final determination of the case; it allowed him, however, to receive half the emoluments of his post during that period.

On the 1st July 1983, the applicant appeared before the Commission. His counsel raised as a preliminary objection before he answered his charges that the Commission had no competence to try the disciplinary offences. The objection was dismissed (see exhibit 13) and the hearing of the case proceeded in the prescribed manner.

It lasted sixteen days and was completed on the 31st October, 1983. The relevant minutes are appended to the application as Appendices 14 to 28, both inclusive.

The respondent Commission at its meeting of the 11th November 1983, decided that:

(a) The case against the applicant on counts 4, 5, 6, had not been proved and therefore the applicant was acquitted on these counts.

(b) Counts 1, 2, 3, 7, 8, and 9 had been fully proved and the respondent Commission found him guilty on them.

The respondent Commission then decided to summon the applicant to appear before it on the 16th November, 1983, in order to be heard in relation to the disciplinary punishment on the counts on which he was found guilty. On the application of counsel for the applicant the hearing was adjourned to the 25th November 1983, when the respondent Commission after hearing counsel for the applicant regarding the imposition of a disciplinary sentence reserved its decision, (Appendix 34). On the following day, after taking into consideration all material factors, it decided to impose on the applicant the disciplinary punishment of demotion to the immediately lower post of Specialist in the Psychiatric Services with the salary of £6,974 yearly in the salary scale A 15 which corresponds to the stage of £7,559 yearly of scale A 16 at which the applicant was at the time calculating from the top of the two scales.

With the completion of this disciplinary proceedings the interdiction of the applicant was terminated and the respondent Commission decided further to return to him the one half of his emoluments which had been withheld during his interdiction.

The disciplinary offences contained in the six counts on which the applicant was found guilty by the respondent Commission were that on various dates he committed acts amounting to a contravention of the duties and obligations of a public officer. In respect of the first three the parti-

culars were that he committed an act of indecent assault on three different days, in October 1977, against a certain Maria Antoniadou, an Assistant Nurse, whereas the particulars of the seventh and eighth counts were acts of indecent assault on Chloe Kimissi and Xenia Boyadji, respectively, both daily paid Assistant Nurses. The ninth count referred to indecent and immoral proposals to the aforesaid Xenia Boyadji.

It has been argued on behalf of the applicant that Articles 12, 13 and 30 of the Constitution have been violated and consequently the sub judice decision is null and void.

Article 12 of the Constitution lays down the minimum rights of an accused person in criminal trials and I need not set here its provisions verbatim as the arguments advanced as regards its violation do not refer to infringement, during the hearing of the case by the respondent Commission, of any of its several provisions. Article 13 which was invoked in conjunction with Article 12 safeguards the right of everyone to move freely through the territory of the Republic and to reside in any part thereof and the right to leave permanently or temporarily the territory of the Republic, which although linked by counsel with Article 12 has no relation whatsoever to the case in issue. Article 30 of the Constitution safeguards the right of access to the courts and prohibits the establishment of judicial committees or exceptional courts under any name whatsoever. Furthermore it safeguards to every person, in the determination of his civil rights and obligations or of any criminal charge against him, the right to a fair and public hearing within a reasonable time by an independent impartial and competent Court established by Law and by paragraph 3 thereof it enumerates the rights that every person has during such hearing. Mainly two aspects of the case have been invoked in support of these arguments. The first is the delay in prosecuting the first three counts which were as already mentioned committed in October 1977, and the applicant was informed for the first time about them upon the commencement of the disciplinary investigations in February 1983. The second aspect is that whereas the alleged conduct of the appellant constituted cri-

minal offences punishable under the Criminal Code, the applicant was not prosecuted before a Court of Law exercising criminal jurisdiction before which all the safeguards of procedure and the law of evidence would have been afforded to him including those to be found in Article 12 of the Constitution. He was instead, it was argued, prosecuted in respect of the disciplinary aspect of the alleged conduct before an Administrative Organ, namely, the Public Service Commission which was claimed to be in such circumstances a noncompetent Court according to the Constitution and which assumed jurisdiction in violation of Article 30, paragraph 1. thereof and furthermore that he was denied his right to a fair and public hearing within a reasonable time by an independent, impartial and competent Court established by Law, the respondent Commission not being such a Court but a Judicial Committee or exceptional court prohibited by Article 30, paragraph 1 of the Constitution. In respect of the delay complained of it was claimed that he was denied thereby the possibility of making his defence properly as after the lapse of so much time, the only thing that anyone could say could be only a mere denial of having committed the acts as it was humanly impossible to bring evidence in his defence of any kind to support same or to speak as to his whereabouts and possible alibi at the time of the offence. He was consequently put in a disadvantageous position and in substance a proper defence was completely impossible. This being tantamount to a denial to the applicant of his right to have a fair hearing within a reasonable time, a situation which entitled this Court to interfere with the sub judice decision and annul same as having been reached in violation of the said provisions of the Constitution.

As already said all the rights safeguarded by Article 12 of the Constitution were afforded to the applicant and it is clearly apparent from the record that the hearing of the case proceeded as provided by paragraph 3 of part III of the First Schedule to the Public Service Law as nearly as could be in the same manner as the hearing of a criminal case in a summary trial. The applicant was afforded the opportunity of a hearing defended by counsel who cross-examined at great length and raised all possible

legal objections that were admirably dealt with by the respondent Commission with their duly reasoned rulings and decisions.

The delay in prosecutions, no doubt, is deprecated and it should be avoided unless there is a reasonable excuse for the failure to prosecute a man promptly but in no way it can be taken in the circumstances of this case to amount to a violation of any of the Articles of the Constitution hereinabove referred to.

The independence of the disciplinary proceedings from the criminal ones has always been recognized and the only nexus that exists under the Public Service Law are those to be found in sections 77 and 78 which read as follows:

> "77. If criminal proceedings are instituted against a public officer, no disciplinary proceedings shall be taken or continued against such officer upon any grounds involved in the criminal proceedings until the criminal proceedings have been finally disposed of.
>
> 78. Where proceedings have been taken against an officer for a criminal offence and the officer has not been found guilty thereof, no disciplinary proceedings can be taken against him on the same charge, but proceedings may be taken against him for a disciplinary offence arising out of his conduct which though connected with the criminal case yet does not raise the same issue as that of the charge in the criminal proceedings."

As pointed out in Fthenakis System of Civil Service Law First Edition Volume C p.. 230, "From the principle of the independence of the disciplinary trial stems the discretionary power of the administration to commit or not, before the Criminal Court the person who has committed a disciplinary offence which possibly brings about his criminal liability". In support of this proposition reference is made to the decision of the Greek Council of State 1080/1953. He then goes on to say that "in consequence of this principle the rule non bis in idem does not apply and consequently for the same offence there may be imposed a sentence both by the criminal and the disciplinary Judge.

(See Decisions of the Greek Council of State 295/1953, 705/1934. See also Conclusions from the Case Law of the Greek Council of State 1929-1959 p. 364 where reference is also made to Case No. 1080/1953). This ground therefore fails and it carries with it also the argument that in the circumstances the respondent Commission was a judicial Committee or an exceptional Court prohibited by the Constitution which in my view it is neither, having been established by Law and given thereby competence to try disciplinary offences. I need not therefore deal here with the notion of judicial Committees and exceptional Courts as there is no principle of Law or provision of the Constitution that makes it imperative that where conduct constituting a disciplinary offence constitutes also a criminal one, the prosecution of the latter before a criminal Court is a condition precedent to the institution of disciplinary proceedings.

Moreover under section 77 of the Public Service Law, hereinabove set out, if criminal proceedings are instituted against a public officer no disciplinary proceedings can be taken or continued against such officer upon any grounds involved in the criminal proceedings until the criminal proceedings have been finally disposed of. In my view this provision in no way prevents the contrary, that is the institution of disciplinary proceedings without instituting criminal proceedings first.

The remaining grounds relied upon by the applicant relate in effect to the findings of fact made by the respondent Commission, based on the credibility of witnesses and the conclusions drawn thereon. They constitute in essence contentions of misconception of fact that, as argued, if accepted would entitle this Court to interfere with the sub judice decision on the ground that it was not reasonably open to the respondent Commission to arrive at the conclusion that it did, that is that the applicant was guilty of the disciplinary offences he was charged with, in view of the serious discrepancies and in the testimony of the various witnesses and their conduct in general.

This Court was invited to conclude that the respondent Commission should have found that the evidence adduced was incredible, suggested to the witnesses by others and

prompted by expediency so that the applicant would be charged and convicted at all costs.

The legal principles governing the interference of an administrative Court with the determination of the factual basis of an administrative act or decision have been dealt with in my judgment in the case of the *Republic* v. *Lefkos Georghiades* (1972) 3 C.L.R. 594 at pp. 691 - 695, by reference to decided cases of the Greek Council of State cited therein. I shall therefore repeat here only what I said at p. 695, which is equally applicable to the facts and circumstances of the present case.

> "In the present case extensive argument was heard regarding the existence or not of facts or the reasonableness of the inferences drawn therefrom. For the reasons given, I do not find it necessary to go into the details of the evidence. It is enough to say that there was ample material before the Commission on which it was entitled to arrive at the conclusion that it did. It has been said repeatedly that this Court will not interfere and substitute its view in the place of that of the Commission, having itself (the Commission) weighed the probative effect of same and having correctly arrived at the conclusion that those facts and circumstances, as its duty was to consider, amounted to the disciplinary offences for which the applicant was found guilty."

On the totality of the circumstances and going through the bulky record and the rulings of the respondent Commission as well as the reasoning of the sub judice decision, I have come to the conclusion that the respondent Commission did not exceed the extreme boundaries of their discretion.

For all the above reasons the recourse is dismissed but in the circumstances there will be no order as to costs.

Recourse dismissed.
No order as to costs.