

1986 August 30

[TRIANTAFYLLIDES, P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

ALECOS NICOLAIDES,

Applicant.

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 83/84).

Reasoning of an administrative act—Collective organ—Decision unfavourable to the subject reached by majority—The reasons for the decision should be specifically and precisely stated.

5 *Disciplinary sentence —Assessment of—Judicial control—Principles applicable.*

10 The applicant, who at the material time was an Inspector of the Police Force, was found guilty for disobedience to orders, namely to wear a black armband by way of mourning for the death of the late President of the Republic Archbishop Makarios and was sentenced to the disciplinary punishment of dismissal from the Police. The sentence was confirmed by the Minister of Interior. The applicant appealed to the Council of Ministers. The appeal was dismissed, but the relevant decision of the Council was annulled by this Court on the ground of violation of the rules of natural justice. As a result the Council of Ministers re-examined the matter, but, once again, it dismissed the appeal. Hence this recourse.

20 *Held, annulling the sub judice decision:* (1) This Court has no power to interfere with the assessment of the disciplinary punishment, but it can examine whether the sub

judice decision has been reached in a valid manner. In order to be able to exercise such control, this Court has to know the reasons for which the decision was taken, especially as, in this case, it emanates from a collective organ and is unfavourable to the applicant. The reasons in this case ought to have been specifically and precisely stated, especially because the decision was reached by majority. 5

(2) The sub judice decision lacks due reasoning and has, therefore, to be annulled. 10

*Sub judice decision annulled.
No order as to costs.*

Cases referred to:

- Papacleovoulou v. The Republic* (1982) 3 C.L.R. 187;
Solomou v. The Republic (1984) 3 C.L.R. 533; 15
Christodoulou v. The Republic (1984) 3 C.L.R. 865;
Eleftheriou v. The Central Bank of Cyprus (1980) 3 C.L.R. 85;
Petrou v. The Republic (1984) 3 C.L.R. 871;
Papageorghiou v. The Republic (1984) 3 C.L.R. 1348. 20

Recourse.

Recourse against the decision of the respondent whereby applicants appeal against his dismissal from the Police Force by way of disciplinary punishment was dismissed.

N. Clerides, for the applicant. 25

N. Charalambous, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

TRIANAFYLLIDES P. read the following judgment. By means of the present recourse the applicant challenges the decision of the respondent Council of Ministers, taken on the 21st December 1983 and communicated to the ap- 30

plicant by a letter dated the 9th January 1984, by means of which there was dismissed the appeal of the applicant against his dismissal from the Police by way of disciplinary punishment.

5 The salient facts of this case are briefly as follows:

The applicant, who at the material time was an Inspector, was charged with disobedience to orders because on the 4th August 1977, and while he was on duty, he disobeyed an order of the Chief of Police to wear a black
10 armband by way of mourning for the death of the late President of the Republic Archbishop Makarios.

The applicant was found guilty by a Disciplinary Committee and there was imposed on him, on the 4th November 1977, the disciplinary punishment of dismissal from the
15 Police.

This punishment was confirmed by the Minister of Interior on the 16th January 1978.

The applicant appealed to the Council of Ministers on the 21st January 1978, but his appeal was dismissed on
20 the 8th March 1978.

Against this decision of the Council of Ministers the applicant filed recourse No. 278/78 in which judgment was delivered on the 14th June 1980 annulling the decision of the Council of Ministers on the ground that it was
25 reached contrary to the rules of natural justice as there was not afforded to the applicant an opportunity to be heard regarding the grounds of his appeal.

On the 21st December 1983 the Council of Ministers re-examined the matter in the light of the judgment in case
30 278/78 and of written representations made by counsel for the applicant. The Council of Ministers decided, once again, that the appeal of the applicant ought to be dismissed.

The Minister to the Presidency disagreed with this decision of the Council of Ministers and the Minister of Finance expressed the view that the punishment of dismissal which
35 was imposed on the applicant was disproportionate to the

disciplinary offence which had been committed by him. The Minister of Interior was present but did not take part in the deliberations of the Council of Ministers.

It has to be pointed out at this stage that this Court has no power to interfere with the assessment of the disciplinary punishment which was imposed on the applicant as this is a matter coming exclusively within the powers of the competent in the matter administrative organs (see, inter alia, in this respect, *Papacleovoulou v. The Republic*, (1982) 3 C.L.R. 187, 197, *Solomou v. The Republic*, (1984) 3 C.L.R. 533, 536 and *Christodoulou v. The Republic*, (1984) 3 C.L.R. 865, 868). 5 10

This Court can, however, examine if the sub judice decision of the Council of Ministers, by means of which the appeal of the applicant was dismissed, has been reached in a valid manner; and in order to be enabled to exercise judicial control in this respect this Court has to know the reasons for which such decision was taken by the Council of Ministers, especially as it is a decision of a collective organ which is unfavourable for the applicant (see, inter alia, in this respect, *Eleftheriou v. The Central Bank of Cyprus*, (1980) 3 C.L.R. 85, 98-100, *Petrou v. The Republic*, (1984) 3 C.L.R. 871, 882, 883, and *Papageorghiou v. The Republic*, (1984) 3 C.L.R. 1348, 1355). 15 20

In the present instance I am faced with the situation that the sub judice decision lacks due reasoning because no reasons at all are given by the Council of Ministers for reaching its sub judice decision. 25

I am of the opinion that this is a case in which the reasons for the decision of the Council of Ministers ought to have been specifically and precisely stated, especially because such decision was reached by majority and not unanimously. 30

The lack of due reasoning for an administrative decision is in itself a ground for its annulment and, consequently, the present recourse succeeds and the sub judice decision is annulled; but I shall not make any order as to costs. 35

*Sub judice decision annulled,
No order as to costs.*