

1987 March 5

{A LOIZOU MALACHTOS SAVVIDES STYLIANIDES KOURRIS, JJ}

LEONTIS CHRISTOU

Appellant - Applicant,

v

THE REPUBLIC OF CYPRUS, THROUGH

a) THE COMMANDER OF POLICE,

b) THE MINISTER OF INTERIOR,

Respondents

*(Revisional Jurisdiction Appeal
No 560)*

Natural Justice — Right to be heard — Not applicable in case of an administrative measure

Police Force — Termination of services — Enlistment under Reg 7(1) of the Police (General) Regulations — Dismissal in virtue of power given thereunder — Nature of — Viewed in the light of the circumstances of this case, it is an administrative measure, and not a disciplinary sanction — It follows that the right to be heard does not arise

5

The appellant was enlisted in the Police Force under Reg 7(1)* of the Police (General) Regulations 1958. The said regulation provides, inter alia, that the Chief Constable may, at any time, upon giving the person enlisted thirty days' notice in writing, determine the engagement of such person.

10

The appellant's services were terminated for the reasons contained in a letter** dated 9 9 84 by the Chief of Police to the Minister of Interior. The appellant challenged the validity of his dismissal by a recourse to this Court on the ground of violation of the rules of natural justice in that no opportunity was afforded to him of being heard and defend himself.

15

As the recourse was dismissed by a Judge of this Court, the present appeal was filed.

Held, *dismissing the appeal*, that the very nature of the enlistment under Reg 7(1) and the power to terminate thereunder viewed in the light of the circumstances of this case, give to the sub judice decision the very characteristic of an administrative measure, in which case the right to be heard

20

*Quoted at pp 373-374 post

**Quoted at pp 374-375 post

does not arise, and not that of a disciplinary sanction, in which case the person affected thereby would have had to be given the right to be heard

Appeal dismissed
No order as to costs

5

Cases referred to

Hadjisavva v The Republic (1972) 3 C.L.R. 174,

Michael v The Republic (1972) 3 C.L.R. 206,

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

Chrstodoulou v The Republic (1968) 3 C.L.R. 603

10 Appeal.

Appeal against the judgment of a Judge of the Supreme Court of Cyprus (Demetriades, J.) given on the 8th February, 1986 (Revisional Jurisdiction Case No. 344/84)* whereby appellant's recourse against the decision of the respondents to terminate his engagement in the Police Force was dismissed.

P. Angelides, for the appellant.

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

Cur. adv. vult.

20 A. LOIZOU J. read the following judgment of the Court. The appellant was enlisted in the Police Force on the 27th October 1981, under the provisions of Regulation 7(1) of the Police (General) Regulations, 1958 which reads as follows:

25 «7.-(1) Notwithstanding anything in regulation 5 of these Regulations contained and subject to the provisions hereinafter contained, the Chief Constable may, at his discretion, enlist a person as a constable for an initial period not exceeding three years but, at the expiration of that period, the person enlisted may, if he has given satisfactory service and if his services are further required by the Chief Constable, upon giving three months' previous notice in writing to the Chief Constable, opt for re-engagement for another like period:

30 Provided that the Chief Constable may, at any time, upon giving the person enlisted thirty days' notice in writing,

*Reported in (1986) 3 C.L.R. 89

determine the engagement of such person.»

The enlistment was for an initial period of three years after he was informed and signed a declaration of acceptance of the terms contained in a notice pursuant to Regulation 5(h) of the aforesaid Regulations.

5

The circumstances leading to and constituting the grounds of the termination of the engagement of the appellant's services are contained in the letter dated the 9th April 1984, which the Chief of Police addressed to the Minister seeking the latter's approval under section 13, subsections 2 and 3 of the Police Law, Cap. 285 as amended. The said letter reads as follows:

10

«May I please have the approval of the Minister so as to proceed to the termination of the services of the above-named pursuant to Regulation 7(1) of the Police (General) Regulations for reasons of insufficiency and unfitness, namely:

15

(1) This Constable is posted in the Protective Security Services of the Police Headquarters. He was enlisted on 27.10.81 and was posted at Department B (Force workshop) having attended the preliminary course of lessons of a duration of 3 weeks.

20

(2) On 9.3.83 there was imposed on him the punishment of the suspension of his increment for unbecoming conduct namely for stealing a caravan.

(3) On 7.9.83 he was convicted by the District Court of Nicosia to a fine and suspension of his driving licence for 6 months after he had admitted offences for negligent driving of a vehicle and driving without a certificate of insurance. For this conviction of his he appeared before a disciplinary Tribunal and there was imposed on him a fine of £8.

25

30

(4) On 30.6.83 he was convicted by a disciplinary Tribunal for absence from duty without leave and there was imposed on him a fine 4 days' wages.

(5) On 18.11.83 there was imposed by the disciplinary Tribunal a sentence of £18, - fine for (i) improper behaviour

35

towards Inspector B Mr. Serdaris and (ii) absence from duty without leave.

5 (6) Between 19.7.83 - 14.9.83 he obtained various goods by false pretences (he issued cheques without having funds to meet them) in all 6 instances for which he had been prosecuted disciplinarily and there was imposed on him a sentence of 10 days' wages fine.

10 2. It is obvious that the general conduct of the said constable is incompatible with the status of a Policeman and in view of the aforesaid negative data his further stay in the Force is considered aimless and injurious.»

15 Upon the Minister of Interior giving his approval the appellant was notified by letter dated the 19th April 1984, of the sub judge decision in which he was informed that by virtue of the powers vested in the Chief of Police under the aforementioned Regulation and the approval of the Minister of Interior his services were terminated and he was as from the 24th April, 1984 to be on 42 days earned leave and that he had to deliver to the General Stores of the Headquarters of the Government property which had been
20 issued to him.

25 As against the said sub judge decision the applicant filed a recourse under Article 146 of the Constitution seeking its annulment on a number of grounds which have been dealt with by the learned trial Judge in his judgment reported in (1986) 3 C.L.R. p. 89 as against which the present appeal was filed.

30 The sole ground upon which same has been argued before us is that in accordance with the rules of natural justice the appellant should have been afforded the opportunity of being heard and defend himself, the sub judge termination of his services not being a mere administrative measure but a disciplinary punishment.

In support of this ground learned counsel for the appellant has referred us to the cases of *Hadji Savva v. The Republic* (1972) 3 C.L.R. 174; *Michael v. The Republic* (1972) 3 C.L.R. 206 and *Petrou v. The Republic* (1980) 3 C.L.R. 203.

35 In our view all the aforesaid cases and those relied therein are

distinguishable as we are concerned in the present case, not with disciplinary proceedings and sanctions but with an administrative measure duly taken under Regulation 7(1) hereinabove set out and the prescribed therein procedure.

As very rightly the learned trial Judge did we likewise adopt with approval what was held in *Christodoulou v. The Republic* (1968) 3 C.L.R. 603 at p. 610 with an almost identical factual background in which it was concluded that in the circumstances of that case the termination of that applicant's services did not amount to a disciplinary measure but merely to the exercise of a legitimate right on the part of the Chief of Police under the proviso to Regulation 7 in the sense that the object of the termination of applicants' services was not to punish him (that could have been achieved under the Police (Discipline) Regulations but to rid the force as was his duty to do of a person who was not fit to be a constable.

The very nature of the enlistment under Regulation 7(1) and the power to terminate thereunder viewed in the light of the circumstances of this case, no doubt give to the sub judice decision the very characteristic of an administrative measure in which case the right to be heard does not arise and not that of a disciplinary sanction, in which case the person affected thereby would have had to be given the right to be heard.

For all the above reasons the appeal is dismissed with no order as to costs.

Appeal dismissed. 25
No order as to costs.