

1988 June 15

[SAVVIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

GEORGHIOS K. GEORGHIOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE COUNCIL OF MINISTERS,

*Respondent.*

(Case No. 141/85).

*Reasoning of an administrative act—It may be derived or supplemented by the material in the files of the administration.*

*Natural Justice—Opportunity of being heard—It should be given when a sanction is to be imposed—Application for retirement benefits by a former member of the Police Force who had been earlier required to resign—In fact, applicant was given such an opportunity, as he submitted a letter containing the reasons in support of his request.*

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Applicant, who was, at the time, a member of the Police Force, pleaded guilty to disciplinary charges and was, as a result, "required to resign". This decision was taken by the Minister of Interior in reviewing the penalty imposed by the Disciplinary Committee. Applicant's appeal to the Council of Ministers was dismissed. The applicant, then, applied for retirement benefits under Regulation 45 of the Police (Discipline) Regulations. The Council of Ministers turned down the application. The relevant minute states that it took into consideration "everything that was mentioned in the meeting and Appendix C of the submission". A letter of the Chief of Police, which was before the Council, explained the history of the case and contained a summary of facts put forward by applicant's counsel in support of the application. The submission to the Council by the Minister of Interior did not contain any recommendation regarding the merits.

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Counsel for applicant submitted that:

(a) The decision lacks due reasoning in that there is no explanation as to "what was said before the Council."

5 (B) Participation of the Minister of Interior, who, in view of his decision to require applicant to resign, should be considered as biased.

(c) Failure to afford applicant an opportunity of being heard.

10 Held, dismissing the recourse: (1) Reasoning may be derived from the file of the case. In the present case the Council of Ministers had before it the record of the applicant and every other necessary material which was contained in the proposal of the Minister of Interior to which reference is made in the decision of the Council of Ministers from which the reasoning of the decision may be derived.

(2) The Minister of Interior did not make any recommendation. Applicant failed to prove bias.

15 (3) The opportunity to be heard must be afforded in cases where a sanction is to be imposed. In any event, the applicant had in this case such an opportunity, as he had submitted an application through his advocates to the Council of Ministers wherein he had the opportunity to state all relevant and necessary matters in support of his case. Furthermore his request and  
20 the reasons advanced are repeated both in the letter of the Chief of Police to the Director-General and the Minister of Interior and the submission on the Minister.

*Recourse dismissed.  
No order as to costs.*

25 *Cases referred to:*

*Georgiou v. The Republic* (1987) 3 C.L.R. 400;

*Savva v. The Council of Ministers* (1984) 3 C.L.R. 285;

*Louca v. The Republic* (1986) 3 C.L.R. 1640.

### Recourse.

30 Recourse against the dismissal of applicant's application for

retirement benefits on his being required to resign from the Police Force.

*L. Clerides*, for the applicant.

*A. Vladimirov*, for the respondent.

*Cur. adv. vult.* 5

SAVVIDES J. read the following judgment. The applicant by this recourse challenges under paragraph B the decision of the respondent communicated to him by letter dated 26th January, 1985, whereby his application for retirement benefits on his being required to resign was dismissed.

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The recourse was originally challenging also, under paragraph A, the decision of the respondent communicated to him by letter dated 21th November, 1984, whereby the respondent affirmed the decision of the Minister of Interior imposing upon him the sentence of requirement to resign from the Police Force as a result of disciplinary proceedings against the applicant.

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Prayer "A" however, was dismissed by me after hearing of the preliminary legal objections raised by counsel for respondent in this recourse. See, in this respect, *Georghiou v. The Republic* (1987) 3 C.L.R. 400. In delivering my judgment in the said case I came to the conclusion that prayer "A" of the recourse should be dismissed whereas the preliminary objection as to the validity of prayer "B", the one under consideration, failed and directions were given for the recourse to proceed for hearing on prayer "B" on its merits.

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The facts of the case are briefly as follows:

On the 22nd December, 1983, the Minister of Interior appointed a disciplinary committee under regulations 10A and 32 of the Police (Discipline ) Regulations to try disciplinary charges against the applicant consisting of (a) abuse of trust, (b) corruption and

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(c) improper conduct.

On the 25th June, 1984, after the applicant pleaded guilty to the charge of corruption the disciplinary committee convicted and sentenced him to deferment of increment until the 1st November, 1985. The said conviction was reviewed by the Minister of Interior according to regulation 36 of the Police (Discipline) Regulations, who increased the sentence to that of requirement to resign. The decision of the Minister of Interior dated 6th September, 1984, was communicated to the applicant on 10th September, 1984, who then appealed to the Council of Ministers.

The applicant's appeal was considered on the 1st November, 1984, by the Council of Ministers which decided to affirm the sentence imposed by the Minister of Interior and dismissed the appeal.

The decision of the Council of Ministers was communicated to the applicant by letter dated 21st November, 1984. On 26th November, 1984, the applicant through his counsel addressed a letter to the Minister of Interior requesting the grant to him of pension and retirement benefits on the basis of his years of service in the Police Force. The applicant's request was embodied in a proposal of the Minister of Interior to the Council of Ministers, which examined it at its meeting of 17th January, 1985, and decided to reject same. The decision of the Council of Ministers was communicated to the applicant by letter dated 26th January, 1985, signed by the Director-General of the Ministry of Interior.

Counsel for applicant advanced the following legal grounds in support of his case:

(a) The letter of the Director-General of the Ministry of Interior dated 26th January, 1985, as well as the decision of the Council of Ministers dated 17th January, 1985 are not duly reasoned as the first one contains no reasoning and the second one contains insufficient reasoning by the mere recording in the minutes that "the Council has taken into consideration everything that was said

at the meeting" without explaining what were the matters taken into consideration.

(b) The participation of the Minister of Interior, who made the proposal to the Council of Ministers, at the meeting at which the sub judice decision was taken violated the rules of natural justice. 5

(c) The Council of Ministers before reaching its decision did not afford the opportunity to the applicant to be heard, in violation of the rules of natural justice.

Before embarking on the legal arguments advanced by counsel for applicant I find it necessary to reproduce the decision of the respondent as contained in the minutes of the meeting of the Council of Ministers of the 17th January, 1985, which reads as follows: 10

"The Council considered the application of ex-police constable 3749, Georghios K. Georghiou, upon whom the disciplinary punishment of requirement to resign was imposed, for the payment to him in accordance with Regulation 45 of the Police (Discipline) Regulations and s.7 of the Pensions Law, Cap. 311 and Laws 17/60, 9 and 18/67, 51 and 119/68, 9/71, 65/73, 42/76, 38/79, 2 and 39/81 of retirement benefits which he earned on the basis of his actual service and having taken into consideration everything that was mentioned at the meeting as well as the contents of Appendix "C" of the submission (letter of the Chief of Police to the Director-General of the Ministry of Interior dated 17th December, 1984) decided that his application should not be accepted." 15 20 25

The contents of the letter of the Chief of Police to the Director-General of the Ministry of Interior dated 17th December, 1984, which was before the Council of Ministers when considering the sub judice decision are setting out the history of the applicant in the Police Force, the offences which he committed and in respect of which disciplinary proceedings were instituted against him, the history of such proceedings which led to the sentence of require- 30

ment to resign from the Police Force, a summary of the facts set out in the application of his counsel requesting for the payment of retirement benefits, his family and financial circumstances as well as the amount of pension and gratuity which the applicant would have been entitled to, in case of a favourable decision by the Council of Ministers.

The proposal of the Ministry of Interior to the Council of Ministers which was also another document taken into consideration in the course of deliberations by the Council of Ministers does not contain anything suggesting that the Minister of Interior has expressed any view against such application. Such proposal makes reference extensively to the contents of the application of counsel for applicant, it gives the family and financial circumstances of the applicant, the poor condition of health of his wife and after making reference to Regulation 45 of the Police (Discipline) Regulations in conjunction with the Pensions Law concludes as follows:

4. If the retired police constable had retired on grounds of health he would have been entitled, on the basis of his service, to a pension of £572.76 annually, and a gratuity of £2,386.52.

5. The Minister of Interior who will introduce the subject will invite the Council of Ministers to decide in accordance with Regulation 45 of the Police (Discipline) Regulations, and s.7 of the Pensions Law, the grant or not of pension/gratuity to ex-constable 3749 Georgios K. Georgiou.

Regulation 45 of the Police (Discipline) Regulations (1958-1977) reads as follows:

"45. Εις περίπτωσιν καθ' ην η δύναμι των παρόντων Κανονισμών επιβληθείσα εις μέλος της Δυνάμεως ποινή διά πειθαρχικόν αδίκημα είναι η της υπό του εκδικάσαντος το αδίκημα απαιτήσεως πρός το μέλος δια παραίτησιν,

η συνεπεία της τοιαύτης ποινής παραίτησις του μέλους θα θεωρήται, διά σκοπούς συντάξεως, ως τερματισμός υπηρεσίας προς το δημόσιον συμφέρον και δεν θα αποστερή το μέλος του δικαιώματος του διά σύνταξιν χορηγουμένην επί της ρηθείσης βάσεως του τερματισμού υπηρεσίας προς το δημόσιον συμφέρον." 5

The English translation is as follows:

("In case the punishment imposed by virtue of these Regulations on a member of the Force for a disciplinary offence is the one of requirement to resign, the resignation of the member following such punishment will, for pension purposes, be considered as termination of services in the public interest and will not deprive the member of his right to a pension granted on the said basis of termination of services in the public interest.") 10  
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S.7 of the Pensions Law, Cap. 311 reads as follows:

"7. Where an officer's service is terminated on the ground that, having regard to the conditions of the public service, the usefulness of the officer thereto and all the other circumstances of the case, such termination is desirable in the public interest, and a pension, gratuity or other allowance cannot otherwise be granted to him under the provisions of this Law, the Council of Ministers may, if it thinks fit, grant such pension, gratuity or other allowance as it thinks just and proper, not exceeding in amount that for which the officer would be eligible if he retired from the public service in the circumstances described in paragraph (e) of section 6 of this Law." 20  
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The question whether the Council of Ministers has a discretion under this regulation to decide whether to grant or not a pension or any other retirement benefits to policemen who have been required to resign as a result of disciplinary proceedings against them has not been raised in these proceedings, very rightly in my view, in view of the decision of this Court in *Savva v. The Coun-* 30

*cil of Ministers (1984) 3 C.L.R. 285* in which it was held that the right to a pension under regulation 45 is not absolute and unqualified and that the Council of Ministers has a discretion on the matter under s.7 of Cap. 311.

5 Having narrated the facts of the case and the relevant provisions in the Police Regulations and the law I come now to consider the first ground raised by counsel for applicant to the effect that there is lack of due reasoning.

10 It is well settled by a series of cases of this Court that reasoning of an administrative decision may be derived from and supplemented by the administrative files as well. Useful reference in this respect may be made to the decision of the Full Bench in the case of *Louca v. The Republic (1986) 3 C.L.R. , 1640* in which at p. 1645 it was held as follows:

15 "Coming now to the submission that the sub judice decision was not duly reasoned. Due reasoning is an essential requirement for an administrative decision; but due reasoning can be sufficiently derived from the administrative file as well. In this particular case the Council of Ministers had before them the  
20 record of the appellant and every other necessary material and in particular the proposal of the Minister of Interior dated 18.1.82 to the Council which is so explicit that it may afford by itself the due reasoning required."

25 In the present case the Council of Ministers had before it the record of the applicant and every other necessary material which was contained in the proposal of the Minister of Interior to which reference is made in the decision of the Council of Ministers from which the reasoning of the decision may be derived. Therefore, the submission of counsel in this respect fails.

30 Concerning the second ground of law argued by counsel for applicant that the participation of the Minister of Interior who made the proposal to the Council of Ministers renders the sub judice decision void as having been taken in violation of the rules of



natural justice, I find no merit in the argument in support thereof. The Minister of Interior had not taken any decision himself nor did he make any recommendation for the rejection of the application of the applicant in which case he could be considered as being biassed or prejudiced against the applicant. On the contrary after putting all necessary facts before the Council of Ministers, in all fairness to the applicant he concluded by suggesting that the matter of granting or not a pension and other benefits to the applicant was a matter within the exclusive discretion of the Council of Ministers. There is nothing in the said proposal which is prejudicial to the applicant or prejudging the decision of the Minister of Interior and the applicant on whom the burden lies failed to prove any bias on the part of the Minister of Interior in this respect. 5 10

I finally come to consider the last submission of counsel for the applicant that there was violation of the rules of natural justice in that the applicant was not afforded an opportunity to be heard. The answer to this submission may be found in the following dicta in the case of *Louca v. The Republic* (supra) at pp.1645-1646 which I fully adopt: 15

"In connection with the submission that the rules of natural justice have been violated by the Council of Ministers as the applicant was not heard: In the first place generally speaking the right of audience can be invoked only in cases where a sanction is to be imposed. Thus no disciplinary sanction should be imposed without the public officer concerned being given the opportunity to be heard before the sanction in question is decided upon. (*HadjiSinnos v. Republic* (1969) 3 C.L.R. 451). Rules of natural justice are also applicable to review procedure under regulation 18(4) of the Police (Discipline) Regulations 1958 (*Orphanides v. Republic* (1968) 3 C.L.R. 385). 20 25 30

Of course in the present case we must not loose sight of the fact that the appellant was not on trial on disciplinary charges; the Council of Ministers was simply examining his request for pension; and further that even so he had the opportunity of be- 35

ing heard as he submitted an application to the Council through his advocate wherein he had the opportunity to state whatever he considered relevant and necessary to state. We find no merit on this complaint which is dismissed as well."

5 In the present case as in *Louca* case the applicant had the opportunity of being heard as he had submitted an application through his advocates to the Council of Ministers wherein he had the opportunity to state all relevant and necessary matters in support of his case. Furthermore his request and the reasons advanced are repeated both in the letter of the Chief of Police to the  
10 Director-General and the Minister of Interior and the proposal of the Minister of Interior and, therefore, were before the Council of Ministers and were considered by it in reaching its decision. I, therefore, find no merit in his complaint in this respect which is also dismissed.  
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In the result the recourse fails but in the circumstances I have decided with great reluctance not to make an order for costs against the applicant.

*Recourse dismissed.*

20 *No order as to costs.*