1988 March 16

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

HARIS THEODORIDES,

Applicant,

v.

THE CENTRAL BANK OF CYPRUS,

Respondent.

(Case No. 565/86).

Constitutional Law—Subsidiary Legislation—Whether Article 54 or 58 of the Constitution restricts the power of the legislature to confer on any organ, other than the Council of Ministers, the power to make regulations—Question answered in the negative.

Central Bank—Disciplinary proceedings—The Central Bank of Cyprus Employees (Conditions of Service) Regulations, 1983, Regs. 39-43—Effect and construction of.

Reasoning of an administrative act—May be supplemented from the material in the file.

Disciplinary sentence—Severity of—Judicial control—Principles applicable.

Constitutional Law—Nullum Delictum sine lege—Constitution, Article 12.1—Not applicable to disciplinary matters.

Disciplinary Offences—Principle of nullum delictum sine lege not applicable—Conduct may amount to an offence, notwithstanding absence of provision making it an offence.

Construction of statutes—Presumption against retrospectivity—Not applicable to procedural matters.

Administrative act—Individual (ατομική) act based on regulatory (γενική) act—Effect on validity of the individual act of a declaration that the latter act is void.

The disciplinary dismissal of the applicant from his position with the Central Bank as from 5.6.79 was annulled by this Court, on the ground that the Regulations, pursuant to which the disciplinary proceedings were taken place, were invalid.

However, prior to that Judgment, the Central Bank of Cyprus Employees (Conditions of Service) Regulations, (1983) (P.I.189/83) were published in the Official Gazette of the Republic, Supplement III (I) No. 1879 dated 5.9.1983 (hereinafter to be referred to as "The Regulations").

Following the issuance of the said Judgment the applicant was interdicted as from 12.3.85, and now disciplinary proceedings were initiated against him under the Regulations for the same disciplinary offence, in respect of which he had been dismissed on 6.6.77 by the annulled decision i.e. persistent absence from duty. Eventually the applicant was again dismissed as from 6.9.85.

Hence this recourse.

The grounds relied upon by applicant in support of the recourse are:

(a) that the Central Bank of Cyprus Employees (Conditions of Service) Regulations 1983, are void because the enabling section, s. 13(2) of the Central Bank Law, 1963, (Law 48/63 as amended by Law 10/79) is unconstitutional.

(b) the respondent bank failed to comply with Regulations 39 - 43.

The argument was that disciplinary proceedings are held before the investigating committee set up under s. 39(2) and that the Governor and the personnel committee acting under Regulation 39(3) are bound by the findings of the investigating committee which has the opportunity to hear witnesses testifying and that the function of the Governor is to impose a sentence on the person found guilty by the investigating committee on the advice of the Personnel Committee.

(c) there has been no due reasoning and abuse of power in imposing the sentence of dismissal upon the applicant.

(d) the members composing the investigating committee in the case un-

der review were the same persons who composed the investigating committee in the previous proceedings which were the subject of Recourse 277/79 and who heard the disciplinary offences in their merits and thus the rules of natural justice have been violated.

(e) the appointment of the persons, who composed the investigating committee, was invalid, in that it was made under the previous Regulations, which were declared invalid by the Court as aforesaid.

(f) The Regulations cannot have retrospective effect unless this is permitted by the enabling law.

(g) The respondent Bank wrongly interdicted the applicant, because according to Regulation 42 interdiction can only be imposed after the hearing before the Governor and the Personnel Committee under regulation 39 (3) and after a decision for his dismissal has been taken by the disciplinary organ. Such interdiction denoted bias against the applicant.

Held, *dismissing the recourse*: (1) The regulations are not contrary to Article 54(g) and 58 of the Constitution. Neither Article 54 nor Article 58 of the Constitution can be construed as restricting the power of the legislature to confer power to make subsidiary legislation to executive organs other than the Council of Ministers, as for instance to a Minister.

It is clear that disciplinary matters under Regulation 39 are dealt with in two stages: (a) the stage of the investigation by the investigating commitee under Regulation 39(2) and (b) the disciplinary proceedings by the Governor with the Personnel Committee under Regulation 39(3). The function of the Committee of Regulation 39(2) is to investigate into the alleged disciplinary offence by taking statements from various persons and to prepare a report and submit it together with any documentary evidence to the Governor. Its duty is to ascertain whether a disciplinary offence is disclosed in order to bring a charge against the person concerned, whereupon the Governor, together with the members of the personnel committee set up under Regulation 39(3) proceed to hear the disciplinary charge.

This is indeed, the procedure followed in this case.

(3) The allegation for lack of due reasoning has no substance. Reasoning may be supplemented from the material in the file. In any event the severity of the sentence is not subject to judicial control.

(4) The members of the Committee set up under Regulation 39(3), who heard the case, did not hear the merits of the case during the annulled proceed-

ings. It follows that there has been no violation of the Rules of Natural Justice.

(5) Individual (ατομικές) administrative acts based on regulatory administrative acts (γενικές διοικητικές πράξεις), which have been declared void, are not automatically void, but voidable, if challenged within the prescribed time limit. It follows that in this case the appointments of the members of the investigating committee are not invalid.

(6) Article 12.1 of the Constitution establishing the principle "Nullum delictum sine lege" is not applicable to disciplinary matters. The presumption against retrospectivity is not applicable to procedural matters. Moreover, conduct of a public officer, if incompatible with his responsibilities, duties or status as such, may be found to amount to a disciplinary offence even if there is no particular legal provision prohibiting such conduct.

(7) The interpretation given to Regulation 18 by counsel for applicant renders it meaningless. Indeed, what is the need of interdiction, if it can only be imposed after dismissal? This Court is inclined to accept the view of counsel for the respondent that Regulation 42 sets up two prerequisites for the interdiction, i.e. (a) the personnel committee "must be of the view that it is in the interest of the bank that the employee should cease to exercise the powers and functions of his office instantly"; and (b) "the proceedings for his dismissal are being or about to be taken".

Recourse dismissed.
No order as to costs.

Cases referred to:

Theodorides v. The Central Bank of Cyprus (1985) 3 C.L.R. 721;

The President of the Republic v. The House of Representatives (1986) 3 C.L.R. 1168;

Police v. Hondrou, 3 R.S.C.C. 82;

The Republic v. Mozoras (1970) 3 C.L.R. 210;

Papageorghiou v. The Republic (1983) 3 C.L.R. 775;

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

Theodorides v. Ploussiou (1976) 3 C.L.R. 319;

Board of Registration of Architects and Civil Engineers v. Kyriakides (1966) 3 C.L.R. 640;

Georghiades v. The Republic (1969) 3 C.L.R. 396;

Enotiades v. The Republic (1971) 3 C.L.R. 409;

Georghiades v. The Republic (1970) 3 C.L.R. 380.

Recourse.

Recourse against the decision of the respondent to dismiss applicant from the service of the Bank.

A. Pandelides, for the applicant.

L. Koursoumba (Mrs.), for the respondent.

Cur. adv. vult.

KOURRIS J. read the following judgment. The applicant by this recourse, seeks a declaration of the Court that the decision of the Governor of the Central Bank which was communicated to the applicant by a letter dated 6.9.1986, by means of which the applicant was dismissed from the service of the Bank, is null and void and of no effect whatsoever.

The facts of this case go back in 1977 and shortly are as follows: -

The applicant has been in the service of the Central Bank of Cyprus as from 1st February, 1969, initially as Clerk II and as from 1st May, 1976, as Assistant Cashier.

On the 28th July, 1977, the Governor of the respondent Bank appointed an investigating committee in accordance with Regulation 39 of the Central Bank of Cyprus Employees (Conditions of Service) Regulations, 1964, to examine charges against the appli-

cant for neglect of duty and/or non-compliance with the Currency Regulations and also for absence from duty without leave w.e.f. 6th June, 1977.

The investigating committee submitted its report to the Governor of the respondent bank of the 12th April, 1979, who, after considering it, in consultation with the personnel committee, found applicant guilty of both charges.

Regarding the charge of absence from duty without leave, the committee advised the Governor to impose the punishment of dismissal which is provided by Regulation 39(3) para (f) of the Regulations. Regarding the charge of neglect of duty, and/or non-compliance with the Currency Regulations, though the committee concluded that applicant was guilty of serious neglect of duty and non-compliance with rules relating to the duties of currency officers, they did not recommend the imposition of any punishment on the applicant in view of the fact that the committee had already recommended his dismissal under the charge of absence from duty without leave. Following this recommendaction, of the personnel committee, the respondent Bank dismissed him from the service of the bank w.e.f. 5th June, 1979.

The applicant, feeling aggrieved, filed a recourse No. 277/79 against the decision of the Governor of the respondent Bank and on 7.3.1985 the Court delivered its judgment annulling the decision on the ground that the Central Bank of Cyprus Employees (Conditions of Service) Regulations, 1964, pursuant to which those disciplinary proceedings had taken place, were void because they had not been properly published. (See *Theodorides v. The Central Bank of Cyprus*, (1985) 3 C.L.R. 721).

However, prior to that Judgment, the Central Bank of Cyprus Employees (Conditions of Service) Regulation, (1983) (P.I. 189/83) were published in the Official Gazette of the Republic, Supplement III (I) No. 1879 dated 5.9.1983 (hereinafter to be referred to as "The Regulations").

Following the judgment of 7.3.1985, the Governor of the Central Bank, in consultation with the personnel department, examined the case of the applicant in the light of the aforesaid decision of the Supreme Court and interdicted the applicant from his duties as from 12.3.1985 by virtue of Regulation 42. It was also decided to enquire into the disciplinary offence of extensive absence from duty without leave from 6th June, 1977, and the applicant was notified by the Governor on the same date.

Thereafter, in compliance with the aforesaid decision, an investigating committee was set up by virtue of Regulation 39(2) to enquire into the offence committed by the applicant. In compliance with Regulation 39(2) the investigating committee consisted of three members, two of which, namely Spyros Stavrou and Sofronis Sofroniou, were appointed by the Governor from among the staff of the bank, and the third, namely, Yiangos Iacovou, was nominated by the Branch Committee of ETYK from among the members of the bank; all three holding office higher in rank than the applicant.

The investigating committee enquire into the matter at numerous meetings held on 18.4.1985, 25.4.1985, 22.5.1985, 12.6.1985, 3.7.1985 and 6.7.1985. On 10.7.1985 it submitted a report with its findings together with all evidence considered by it and minutes of all its meetings to the Governor. (See Red 31 in exhibit X).

In view of the findings of the investigating committee, the Governor, in consultation with the Personnel Committee proceeded pursuant to Regulation 39(3), to consider the case. On 24.9.1985, the applicant was notified accordingly and a copy of the report of the investigating committee together with all evidence submitted thereto, was at that stage communicated to him.

The charge of extensive absence from duty without leave from 6th June, 1977, was brought against the applicant to which he pleaded not guilty through his advocate. (See Red 33 of exhibit X). At a series of meetings, the Governor of the bank in council

with the personnel committee considered the disciplinary offence; it summoned witnesses and heard evidence in the presence of applicant's counsel, Mr. Antis Pantelides, heard applicant himself testifying in his case, and further heard the advocate for the applicant and considered all legal issues raised by him. (See Red 33 - 38 in exhibit X). The above minutes were sent to applicant's counsel on 11.4.1986.

On 28.5.1986, the personnel committee at its final meeting on the matter, considered, and decided on all legal issues raised before it by counsel for the applicant and found the applicant guilty of the offence charged and further decided, pursuant to Regulation 39(3) to advise the Governor that the offence committed by the applicant justified the imposition of the punishment of dismissal. (Red 40 in exhibit X).

On 28.8.1986, the Governor of the respondent bank by letter to the applicant informed him of the conclusions and advice of the Personnel Committee as aforesaid, and invited him to express his view on that (Red 41 of exhibit X).

Counsel for the applicant, Mr. Pantelides, by his letter dated 2.9.1986, informed the Governor that his client stated again what had been stated by him and on his behalf during the hearings before the committee; further, he requested that it be taken into consideration the fact that his client was already in Australia when the bank refused to accept his resignation. (See red 42 in exhibit X). On 5.9.1986, the Governor of the Central Bank informed the applicant by letter that he had duly considered the contents of counsel's letter of 2.9.1986, but he considered that the offence committed by the applicant did not justify any other course but the imposition of the punishment of dismissal and, therefore, his service at the Central Bank of Cyprus was terminated as from the following day, 6.9.1985 (See Red 43 in exhibit X). Hence the present recourse.

The main contentions of learned counsel for the applicant are: -

(a) that the Central Bank of Cyprus Employees (Conditions of Service) Regulations 1983, are void because the enabling section, s.13(2) of the Central Bank Law, 1963, (Law 48/63 as amended by Law 10/79) is unconstitutional.

(b) the respondent bank failed to comply with Regulations 39 - 43; and

(c) there has been no due reasoning and abuse of power in imposing the sentence of dismissal upon the applicant.

With regard to the first point above, learned counsel for the applicant contended that the said regulations are void because the enabling section, s.13(2) of the Central Bank Law, 48/63, (as amended by Law 10/79), is unconstitutional, because it is contrary to Articles 54(g) and 58 of the Constitution, in that it confers power to make regulations "upon the approval of the Minister", whereas, in his submission, such power can only be conferred upon the Council of Ministers. Consequently, he said, the proceedings for applicant's dismissal are invalid.

Counsel for the respondent committee argued that the regulations are not contrary to Articles 54(g) and 58 of the Constitution because Article 54 of the Constitution is not of an exclusionary nature and Article 58 simply enumerates indicatively the powers of the Minister.

I have given careful consideration to this point and I have reached the conclusion that the said regulations are not contrary to Article 54(g) and 58 of the Constitution. In my opinion, neither Article 54 nor Article 58 of the Constitution can be construed as restricting the power of the legislature to confer power to make subsidiary legislation to executive organs other than the Council of Ministers, as for instance to a Minister. I agree with learned counsel for the respondent that Article 54 of the Constitution is not of an exclusionary nature irrespective of the fact that paragraph (g) thereof expressly makes the existence and extent of such power subject to a provision in the law to that effect, and,

on the other hand, Article 58 simply enumerates indicatively the powers of the Minister. There is nothing to prevent the House of Representatives from giving legislative authorization to exercise subsidiary legislative power to a Minister. Neither Article 54 or 58 of the Constitution prevent the House of Representatives from doing so. The constitutional provisions do not prevent the House of Representatives from delegating its power to make subsidiary legislation to executive organs and neither Article 54 nor Article 58 exclude the legislative authorization to exercise subsidiary legislative power given on each occasion by a law of the House of Representatives to a Minister. In the Reference of The President of the Republic v. The House of Representatives, (1986) 3 C.L.R. 1168, the Supreme Court held, inter alia, at p. 1172 as follows; -

> "1. The exercise by the Council of Ministers of its power to make regulations under Article 54(g) of the Constitution, does not amount to the exercise of autonomous legislative power but it is the exercise of subsidiary legislative power pursuant to the legislative authorization given to it on each particular occasion by a law of the House of Representatives".

Also, in the case of Police v. Hondrou, 3 R.S.C.C. 82, it was held at p. 85 : -

> "There is nothing in our Constitution to prevent the House of Representatives from delegating its power to legislate to other organs in the Republic in accordance with the accepted principles of constitutional law and the doctrine of delegated legislation."

Support also is to be found in Daktoglu Genikon Dioikitikon Dikeon, 2nd edn. (1984), pp. 56 and 69 and paras. 173 - 176 and 186, and Stassinopoullos Dikeon ton Dioikitikon Praxeon, (1951) pp. 7 - 12.

In conclusion, I think that the constitutional provisions do not expressly or impliedly limit the power of the Legislature, nor do

they expressly or impliedly confine it so that such legislative authorization can only be given to the Council of Ministers.

For these reasons, this point fails.

Learned counsel for the applicant submitted that the respondent bank failed to comply with Regulations 39 and 43. He contended that disciplinary proceedings are held berofe the investigating committee set up under s.39(2) and that the Governor and the personnel committee acting under regulation 39 (3) are bound by the findings of investigating committee which had the opportunity to hear witnesses testifying and that the function of the Governor is to impose a sentence on the person found guilty by the investigating committee on the advice of the Personnel Committee.

The contention of learned counsel for the applicant is that the investigating committee acted contrary to Regulations 39 and 43 (c) and (d) in that the investigating committee did not hear witnesses in the presence of counsel for the person charged and did not call witnesses on behalf of the person charged as requested by counsel for the applicant. He argued that the disciplinary proceedings are held by the investigating committee and that the sole function of the Governor is, on the advice of the Personnel Committee to impose sentence on the person found guilty by the investigating committee.

Learned counsel for the respondent bank submitted that the function of the investigating committee is to carry out investigation into an alleged disciplinary offence and to submit a report to the Governor and that the Governor, with the Personnel Committee is conducting the disciplinary proceedings and if the person charged is found guilty then he imposes a sentence on the advice of the personnel committee.

It is pertinent at this stage to set out Regulations 39 and 43: -

"39.-(1) Πειθαρχικά μέτρα δυνατόν να ληφθώσιν εναντίον υπαλλήλου δυνάμει των προνοιών των

παραγράφων (2), (3) και (4) του παρόντος Κανονισμού, εις απάσας τας περιπτώσεις καθ' ας ο υπάλληλος είναι ένοχος οιασδήποτε παραβάσεως ή αμελείας καθήκοντος δυνάμει οιουδήποτε Κανονισμού ή εις περίπτωσιν μη συμμορφώσεως προς οιονδήποτε κανονισμόν νόμιμον διαταγήν ή εγκύκλιον του Διοικητού ή δι' ανάρμοστον διαγωγήν εν τη εκτελέσει των καθηκόντων του ή εις περίπτωσιν καταδίκης αυτού δι' αδίκημα αφορών εις ανήθικον πράξιν ή εις περίπτωσιν καθ' ην ούτος ήθελε καταδικασθή υπό Δικαστηρίου εις φυλάκισιν διά περίοδον υπερβαίνουσαν τας επτά ημέρας.

(2) Οσάκις εγείρεται θέμα λήψεως πειθαρχικών μέτρων εναντίον υπαλλήλου, διεξάγεται έρευνα υπό επιτροπής αποτελουμένης εκ τριών μελών, εξ ων τα δύο διορίζονται εκ του προσωπικού της Τραπέζης υπό του Διοικητού, το δε έτερον υποδεικνύεται εκ των μελών του προσωπικού της Τραπέζης υπό της Κλαδικής Επιτροπής της ενδιαφερομένης Συντεχνίας, νοουμένου ότι πάντα τα τοιαύτα μέλη της Επιτροπής θα κατέχωσι θέσεις ανωτέρας εις βαθμόν εκείνης του υπαλλήλου καθ' ου λαμβάνονται πειθαρχικά μέτρα. Η τοιαύτη επιτροπή, συνιστωμένη εν εκάστη περιπτώσει ως ανωτέρω αναφέρεται, υποβάλλει έκθεσιν των πορισμάτων αυτής προς τον Διοικητήν.

(3) Τηρουμένων των διατάξεων του Κανονισμού 43, η έκθεσις της επιτροπής ερεύνης, διοριζομένης δυνάμει της παραγράφου (2) του παρόντος Κανονισμού, ομού μεθ' οιασδήποτε μαρτυρίας χρησιμοποιουμένης υπέρ ή κατά του ενδιαφερομένου υπαλλήλου, εξετάζεται υπό του Διοικητού εν συμβουλίω μετά της Επιτροπής Προσωπικού και ο Διοικητής, ενεργών συμφώνως προς γνωμοδότησιν της Επιτροπής Προσωπικού (Προσωπικού,) δύναται να επιβάλη οιανδήποτε εκ των ακολούθων ποινών:

(α) Επίπληξιν

(β) Διακοπήν χορηγήσεως προσαυξήσεως

(γ) Αναβολήν χορηγήσεως προσαυξήσεως

(δ) Υποβιβασμόν βαθμού ή θέσεως

(ε) Υποχρεωτικήν αφυπηρέτησιν

(ζ) Απόλυσιν.

(4) Το ευεργέτημα της αμφιβολίας θα δίδηται εις τον κατηγορούμενον υπάλληλον.

.....

43. Εις απάσας τας περιπτώσεις τας εξεταζομένας δυνάμει του Κανονισμού 39 και της παραγράφου (2) του Κανονισμού 41, δέον όπως τηρώνται οι ακόλουθοι κανόνες:

(α) Ο υπάλληλος δέον όπως ειδοποιήται γραπτώς περί των λόγων δι' ους σκοπείται η επιβολή ποινής, ως και περί της σκοπουμένης ποινής.

(β) Ο υπάλληλος δικαιούται όπως γνωρίζη πάντα τα γεγονότα της κατ' αυτού υποθέσεως και θα δίδηται εις αυτόν πάσα ευκαιρία υπερασπίσεως εαυτού και αποδείξεως της αθωότητός του.

(γ) Ο υπάλληλος δικαιούται όπως παρευρίσκεται κατά την διάρκειαν της εξετάσεως της υποθέσεώς του και, εάν εξετάζωνται μάρτυρες, να θέτη εις αυτούς ερωτήσεις.

(δ) Έγγραφοι μαρτυρίαι δεν θα χρησιμοποιώνται εναντίον του υπαλλήλου, εκτός εάν προηγουμένως παραχωρηθή εις αυτόν αντίγραφον ή η ευκαιρία να γνωρίση το περιεχόμενον των τοιούτων μαρτυριών."

It is clear that disciplinary matters under Regulation 39 are dealt with in two stages: (a) the stage of the investigation by the

investigating committee under Regulation 39(2) and (b) the disciplinary proceedings by the Governor with the Personnel Committee under Regulation 39(3). Under Regulation 39(2) the investigation is carried out by a committee consisting of three members, two of which are appointed by the Governor, and the third is nominated by the Branch Committee of the union concerned of the staff of the bank, all holding offices higher in rank than the employee under investigation. I hold the view that its function is to investigate into the alleged disciplinary offence by taking statements from various persons and to prepare a report and submit it together with any documentary evidence to the Governor. Its duty is to ascertain whether a disciplinary offence is disclosed in order to bring a charge against the person concerned, whereupon the Governor, together with the members of the personnel committee set up under Regulation 39(3) proceed to hear the disciplinary charge. The function of the committee set up under Regulation 39(3) is to hear witnesses, to listen to their cross-examination by counsel representing the person charged, to hear any witnesses called by the person charged, and to hear the evidence of the person charged and if they found him guilty then the Governor will impose sentence on the advice of the personnel committee.

In the present case the investigating committee which was set up under Regulation 39(2) carried out an investigation into the alleged offence and having obtained statements from various persons, it submitted its report to the Governor of the respondent bank and the applicant was charged, to which he pleaded guilty, and the hearing of the case proceeded before the Governor in council with the Personnel Committee under Regulation 39(3). Applicant's counsel was present at all meetings and he cross-examined the witnesses and he then called the applicant to give evidence. He also raised a number of legal points. This committee, having evaluated the evidence before it and having heard counsel for the applicant, found the applicant guilty of the disciplinary offence of extensive absence from duty without leave from 6th June, 1987 and then the Governor proceeded to impose sentence on the advice of the personnel committee in accordance with Regulation 39(2).

In my view, the relevant provisions of the regulations have been complied with. Applicant had a copy of the report of the investigating committee to the Governor, and during the hearing witnesses were examined in the presence of his counsel and were cross-examined by him and generally all safeguards relating to a fair hearing had been complied with and there has been no violation of the Rules of Natural Justice.

In view of the above, this point also fails.

Learned counsel for the applicant alleged that the decision of the respondent bank contained in the letter of the Governor of 5.9.1986 lacks due reasoning in that the Governor in the said letter simply states that the offence of the applicant merits the punishment of dismissal.

I think that this ground is not valid and fails because the letter of the Governor of 5.9.1986 expressly refers to his previous letter to the applicant of 28.8.1986 to which the minutes of the relevant meeting of 28.5.1986 were attached, containing a reasoned decision of the committee to advise the Governor as it did. (See Red 40 - 43).

Further, it is a well-settled principle of administrative law that a decision is duly reasoned in all respects even if an administrative organ does not report in detail every aspect dealt with by it and any reasoning that may be found to be lacking may be supplemented from the files. In the present case there is ample material in the files supplementing the decision of the Governor.

Another argument advanced by learned counsel for the applicant with regard to the sentence is that relating to the severity of the sentence.

It is well-established that an administrative court cannot interfere with the discretion of the sentencing organ in passing sentence and the severity, as such, of a disciplinary sanction cannot be tested and decided upon by means of a recourse under Article

146. (See *The Republic v. Mozoras,* (1970) 3 C.L.R. 210, decided by the Full Bench where Triantafyllides, J. (as he then was), said at p. 221: -

"Lastly I have to deal with the contention - again not decided by the trial Judge, once he had annulled the dismissal of the respondent - that the disciplinary punishment imposed on the respondent was excessive. The short answer to this is that failing any legislative provisions entitling this Court, in the exercise of its competence under Article 146, to decide on the substance of certain aspects of disciplinary matters, (and it would be in the interests of justice if such provisions came to be enacted here, as in Greece), the severity, as such of a disciplinary sanction cannot be tested and decided upon by means of a recourse under Article 146. (See *Kyriakopoullos on Greek Administrative Law,* 4th edn., Vol. III, p. 305, p. 308)."

This case was followed in a number of cases such as, inter alia, *Papageorghiou v. The Republic.* (1983) 3 C.L.R. 775 and *Solomou v. The Republic,* (1984) 3 C.L.R. 533.

I now propose to deal with the other issues raised by counsel for the applicant.

One of the issues is that the members composing the investigating committee in the case under review were the same persons who composed the investigating committee in the previous proceedings which were the subject of Recourse 277/79 and who heard the disciplinary offences in their merits and thus the rules of natural justice have been violated.

Whatever the position was in Case No. 277/79, it is clear in the present case that the members of the investigating committee set up under Regulation 39(2) were not the same members who composed the committee set up under Regulation 39(3) who heard the disciplinary offence on its merits and it is also clear that these persons did not hear the disciplinary offence on its merits

on the previous occasion which gave rise to Recourse No. 277/79. In short, the persons who tried the applicant on the previous occasion are not the same persons who tried the applicant under Regulation 39(3) in the present proceedings. Therefore, there has been no violation of the rules of natural justice and this issue fails.

Another ground for annulment advanced by learned counsel for the applicant is that the investigating committee set up under Regulation 39(2) was composed contrary to the said regulations. Learned counsel argued that since the members of the investigating committee were appointed to the post held by them at the material time, under the provisions of the 1964 Regulations, and as the regulations in question had been held by the Supreme Court to have been invalidly enacted, (*Theodorides v. Central Bank,* (1985) 3 C.L.R. 721), the appointments of the said persons were invalid and, consequently, the investigating committee was improperly composed, and as a result, the whole procedure ought to be annulled.

I do not think that this point can stand as Daktoglou states in his Treatise on Administrative Law, 2nd end. 1984, at pp. 56 - 57, among the important differences between regulations, i.e. "*kanonistikes dikitikes praxis*" and "*atomikes dikitikes praxis* ", i.e. appointments, promotions etc., is that the former is revocable for the future (ex nunc) whereas the latter is revocable retrospectively (ex tunc). Therefore, the "atomikes praxis", based on invalid "kanonistikes praxis" which have been declared void are not automatically void but are voidable and can be so declared by the Administrative Court if challenged within the prescribed time-limit. Therefore, an administrative court when declaring legislation uncostitutional, does not do so for all purposes but only in relation to the act which is the subject matter of the recourse before it. (See *Theodorides v. Plousiou,* (1976) 3 C.L.R. 319.) It follows, that though the 1964 Regulations had been held invalid for the purposes of the disciplinary proceedings in relation to which they were challenged, their invalidity in no way affects appointments made prior to that pronouncement and, therefore, the

appointments and /or promotions of members of the investigating committee are still valid.

The next point raised by learned counsel for the applicant is that the said Regulations cannot have retrospective effect unless this is permitted by the enabling law.

It is well - settled that legislation cannot be challenged on grounds of uncostitutionality or illegality unless it is relevant to the special issue. (*Theodorides v. Ploussiou,* (1976) 3 C.L.R. 319; *Board of Registration of Architects and Civil Engineers v. Kyriakides,* (1966) 3 C.L.R. 640. both cases decided by the Full Bench of the Supreme Court).

I think that the issue of the retrospectivity of Regulations 189/83 is not relevant to the case in hand because the proceedings challenged commenced after the publication of the relevant Regulations. For the conduct of the applicant to become punishable under the regulations published in 1983, it is not necessary that such regulations should have retrospective effect so that it would have constituted an offence at that time.

I agree with the submission of learned counsel for the respondent bank that the principle of nullum delictum sine lege, which is given effect to by the first part of paragraph 1 ofArticle 12 of the Constitution, which provides that "no person shall be guilty of an offence on account of any act or omission which did not constitute an offence under the law at the time when it was committed", has no application to disciplinary matters because of the nature of the status of the public officers. (*Georghiades v. The Republic,* (1969) 3 C.L.R. 396 at pp. 403 - 404). This case was reversed on appeal but on other grounds.

Again, the presumption against retrospectivity is not applicable to procedural matters. See *Enotiades v. The Republic,* (1971) 3 C.L.R. 409 where at p. 414 it is stated "In relation to disciplinary matters the principle of nullum delictum sine lege is not applicable."

Further, even if no specific legislation existed at the time of the conduct of the applicant rendering it an offence, then if the conduct of a public officer is incompatible with his responsibilities, duties or status as such, may be found to amount to a disciplinary offence even if there is no particular legal provision prohibiting such conduct. (See *Georghiades v. The Republic,* (1970) 3 C.L.R. 380 at p. 399.) And it is clear that extensive absence from duty i.e. from 6.6.1977 till 19.5.1978, without leave, is incompatible with the responsibilities, duties or status of an employee.

Lastly, counsel for the applicant alleged that the respondent bank has wrongly interdicted the applicant before the commencement of the inquiry by the investigating committee. He contended that this was contrary to Regulation 42 and went on to say that by interdicting the applicant at that stage indicates that the respondent was biased against the applicant. He argued that according to Regulation 42 interdiction can only be imposed after the hearing before the Governor and the Personnel Committee under Regulation 39(3) and after a decision for his dismissal has been taken by the disciplinary organ, and he said that the interdiction before that stage in the proceedings denotes bias against the person charged.

Regulation 42 reads as follows:-

42.- (1) Εάν κατόπιν εξετάσεως μιάς υποθέσεως η Επιτροπή Προσωπικού κρίνη ότι υπάλληλος δέον όπως, χάριν των συμφερόντων της Τραπέζης, παύση αμέσως να ενασκή τα εκ της θέσεως του απορρέοντα δικαιώματα και καθήκοντα, ο Διοικητής ενεργών συμφώνως προς γνωμοδότησιν της Επιτροπής Προσωπικού, θέτει υπό διαθεσιμότητα τον υπαλλήλον απαγορεύων την υπ ' αυτού ενάσκησιν των εκ της θέσεως του απορρεόντων δικαιωμάτων και καθηκόντων, νοουμένου ότι λαμβάνονται ή ότι επίκεινται να ληφθώσι μέτρα περί απολύσεως του ή ότι ούτος ευρίσκεται υπό ποινικήν δίωξιν. Κατά την διαρκεία της διαθεσιμότητος ο υπάλληλος θα λαμβάνη το ήμισυ των απολαβών του.

(2) Εάν η πειθαρχική δίωξις εναντίον υπαλλήλου δεν ήθελε καταλήξει εις την απόλυσιν ή την επιβολήν εις αυτόν άλλης ποινής ή εις την καταδίκην αυτού επί της ποινικής διώξεως, ούτος δικαιούται εις την πλήρη ανάληψιν των απολαβών του, ως εάν ούτος δεν είχε τεθή υπό διαθεσιμότητα.

Learned counsel for the respondent argued that the procedure followed by the respondent bank was correct and she said that Regulation 42 sets out two conditions that must be satisfied for the Governor to interdict an employee upon consideration of a case against him, namely that (a) the personnel committee "must be of the view that it is in the interest of the bank that the employee should cease to exercise the powers and functions of his office instantly"; and (b) "the proceedings for his dismissal are being or about to be taken".

She went on to say that "during the period of the interdiction the employee shall receive one-half of his emoluments". She invited the Court to find that on the true construction of Regulation 42 the Governor, on the advice of the personnel committee when investigation is about to commence or is in progress, in a disciplinary offence which is a serious one which may lead to dismissal, and it is in the interest of the bank that the employee under investigation should cease to exercise his duties, may interdict him. She said that this is supported also by Regulation 42(2) which provides that in case the proceedings do not result in the dismissal or other punishment of the employee, he shall be entitled to the full amount of emoluments.

I have given anxious consideration to this point in view of the wording of Regulation 42 and I think, if I were to accept the construction given to Regulation 42 by learned counsel for the applicant, it would lead to an absurdity because if the Governor can only interdict an employee after the hearing before the disciplinary organ was completed under Regulation 39(3) and after the decision to dismiss an employee is taken, then interdiction is meaningless and will serve no purpose, for if the person is found

guilty and a decision is taken to dismiss him, then he is dismissed instantly. I am inclined to accept the intepretation given to Regulation 42 by learned counsel for the respondent bank in view of the fact that Regulation 42 provides that the Governor may interdict an employee if measures are taken or are about to be taken for his dismissal. Further, there is provision for the payment of half of the emoluments of the employee during his interdiction and there is also provision under Regulation 42(2) for the right of an employee to be paid all his emoluments during his interdiction if he is acquitted. All these provisions would not have been necessary if I were to accept the argument of learned counsel for the applicant that the Governor can interdict an employee after a decision for his dismissal has been taken.

For these reasons, I do not think that the interdiction of the applicant established any bias agaist him by the respondent bank.

In view of the above, the recourse is dismissed, but in the exercise of my discretion, I make no order for costs.

Before concluding, I would like to state that Regulations 39, 42 and 43 are not happily drafted and the sooner they are redrafted the better. I cannot say anything about the rest of the Regulations because they were not under examination in the present case.

Recourse dismissed.
No order as to costs .