

Disciplinary proceedings PSC

- Disciplinary proceedings can start in two ways: either as a result of criminal prosecution if the misdemeanour of the public officer amounts also to a criminal offence e.g theft, fraud etc. or as a result of disciplinary proceedings which start within the Public Service
- In the first case, the PSC will wait for the criminal proceedings to end and then act accordingly. One will consider the gravity of the offence and the disciplinary proceedings will take place which may lead to dismissal. If a public officer is acquitted, this does not mean that the disciplinary proceedings will stop. Since from the evidence of the hearing it could result that the officer brought disrepute to the Service, which though not a criminal offence is a disciplinary offence
- In serious cases, the Head of Department may request the PSC to suspend on half pay a public officer until the criminal or disciplinary proceedings are concluded

Final Decision

- The final decision regarding discipline is taken by the Prime Minister ; however he is bound to act on the binding recommendation of` the PSC. He can refer back once a recommendation to the Psc for reconsideration; but the final decision remains that of PSC.
- However strangely enough no court can inquire into whether the prime minister acted on the recommendation of the psc.
- Article 115 protect s the PSC from judicial review. However, the courts have ruled that if the Psc breaches human rights, or does not act according to its own rules, or acts unreasonably , the courts of law in spite of the ouster clause, can sill review PSC (Galea and Cacopardo(1985), Portelli and Gatt (2010) Mattocks

Ouster clauses in the Constitution

- .86.(1) Where by this Constitution the Prime Minister is required to exercise any function on the recommendation of any person or authority **he shall exercise that function in accordance with such recommendation:**
- Provided that - (a) before he acts in accordance therewith he may once refer that recommendation back for reconsideration by the person or authority concerned; and(b) if that person or authority, having reconsidered the original recommendation under the preceding paragraph, substitutes therefor a different recommendation, the provisions of this sub-article shall apply to that different recommendation as they apply to the original recommendation
- (2) Where by this Constitution the Prime Minister is required to perform any function after consultation with any person or authority, he shall not be obliged to perform that function in accordance with the advice of that person or authority.
- (3) Where by this Constitution the Prime Minister **is required** to perform any function in accordance with the recommendation of ,or after consultation with, any person or authority, the question whether he has in any case received, or acted in accordance with such recommendation or whether he has consulted with such person or authority, **shall not be enquired into in any court.**
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Psc ouster clause art 115 of Const

- *.Protection of Public Service Commission from legal proceedings.*
- 115. The question whether - (a) the Public Service Commission has validly performed any function vested in it by or under this Constitution; (b) any member of the Public Service Commission or any public officer or other authority has validly performed any function delegated to such member, public officer or authority in pursuance of the provisions of sub-article (1) of article 110 of this Constitution; or(c) any member of the Public Service Commission or any public officer or other authority has validly performed any other function in relation to the work of the Commission or in relation to any such function as is referred to in the preceding paragraph, **shall not be enquired into in any court.**