IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

1. NICOSIA TECHALEMIT CO.,
2. CHRISTAKIS VASSILOPOULLOS,

Applicants,

and

THE MUNICIPALITY OF NICOSIA AND/OR THE MUNICIPAL COMMISSION OF NICOSIA,

Respondent.

(*Case No.* 174/69).

Road Traffic—Municipal Bye-Laws—Declaration of a street as a street for one way traffic only—Notification to that effect by the Municipal Commission of Nicosia acting under Bye-Law 11(1)(a) *of the Nicosia Municipal (Traffic) Bye-Laws,* 1952—*Prior concurrence of the Commander of Police—Sufficient if obtained prior to the public notification and not, necessarily, prior to the decision leading to such notification.*

Legislation by reference—The Nicosia Municipal (Traffic) Bye-Laws 1952—*Ceased to be in force on December* 31, 1962 *together with all other legislation concerning municipalities—Said Bye-Laws re-enacted by reference by means of section* 8 *of the Municipalities Law,* 1964 (*Law No.* 64 *of* 1964)—*Validly and properly re-enacted as part of the Nicosia Municipal Bye-Laws* 1965—*See further immediately herebelow.*

Legislation by reference—Undesirable, as a rule—However, this course may be properly resorted to under pressure of events due to exceptional circumstances of internal political anomalousness—As those which led to the enactment of the Municipalities Law 1964 (*Law No.* 64 *of* 1964) *after the Municipal Corporations Law Cap.* 240 *as well as any other legislation concerning municipalities ceased to be in force on December* 31, 1962.

The Nicosia Municipal Bye-Laws 1965—*Properly and validly made—Within the scope of the Municipalities Law* 1964 *under which Law they were made.*

Deprivation of property—Article 23.2 *and* 4 *of the Constitution—The declaration of a street as a street for one way traffic cannot be said in the circumstances of this case to amount to such*

deprivation of property viz. *to deprivation of the applicants' proprietary interests in their petrol filling-station involved in this case--Otherwise, had the said declaration entailed the closing down of the said station.*

Constitutional Law—Article 23 *of the Constitution—Deprivation of property—See immediately hereabove.*

Discretionary powers—Allegation of excess and abuse of such powers—Judicial control of discretionary powers vested in the administration—Principles upon which the Supreme Court will interfere by virtue of its competence under Article 146 *of the Constitution—Non adoption by the respondent municipality of a possible but less effective alternative solution, not a sufficient ground for annulling the* sub judice *decision in the instant case—In the light of all material circumstances in this case and of the principles of law governing the exercise of the relevant judicial control in the matter, the Court has not been satisfied that it should interfere with the respondent's decision complained of.*

Judicial control of the discretionary powers vested in the administration—Principles governing such control—See immediately hereabove.

By this recourse the applicants, who are the proprietors of a petrol filling station in Arnaldas Street in Nicosia, challenge the validity of a decision of the respondent municipality of Nicosia to declare the said street as a street for one way traffic. The relevant public notification was published in the Official Gazette on June 6, 1969. The municipality has acted under bye-law 11(1)(a) of the Nicosia Municipal (Traffic) Bye-Laws, 1952, which were re-enacted by reference as part of the Nicosia Municipal Bye-Laws, 1965, made under, *inter alia*, section 8 of the Municipalities Law, 1964 (Law No. 64 of 1964) which section was re-enacted by reference, as part thereof, section 126 of the Municipal Corporations Law, Cap. 240, which empowers the making of bye-laws in relation to one way traffic, such as the aforementioned bye-law (11)(1)(a). It is to be noted here that Cap. 240 (*supra*) ceased to be in force since December 31, 1962.

The main grounds upon which the validity of the *sub judice* decision was challenged by the applicants are briefly as follows :—

(1) The prior concurrence of the Commander of Police, which is required under bye-law 11(1)(a) (*supra*) was not

obtained before the Municipal Commission of Nicosia decided on May 5, 1969 to declare Arnaldas Street as a street for one way traffic, but was given subsequently on May 28, 1969 ; and, so, bye-law 11(1)(a) was not complied with.

(2) The 1965 Bye-Laws, made under the aforementioned Law No. 64 of 1964 (*supra*), have not been validly made, because they were not within the scope of the said Law No. 64 of 1964, in view of its nature, as such nature is to be ascertained from the whole of the Law and, in particular, from its preamble.

(3) The aforesaid 1952 Bye-Laws, which ceased to be in force with Cap. 240 on December 31, 1962 (*supra*) could not be revived by reference in the 1965 Bye-Laws (*supra*) ; new Bye-Laws altogether ought to have been made in respect of the matters governed by the 1952 Bye-Laws, the full text of which would then have had to be published in the Official Gazette.

(4) As a result of the *sub judice* decision, the petrol filling-station business of the applicants has been prejudicially affected to such an extent that the declaration of Arnaldas Street as a street for one way traffic amounts, in effect, to a deprivation in the sense of, and is therefore inconsistent with, the provisions of Article 23 of the Constitution.

(5) In the light of all relevant considerations, the respondent Municipality has acted in excess or abuse of powers by declaring the said street as a street for one way traffic.

Rejecting all the arguments put forward by the applicants, the Court dismissed the recourse and :—

Held, (1). *As to the argument under* (1) *hereabove* :

So long as the concurrence of the Commander of Police was given on May 28, 1969, *viz.* prior to the publication of the relevant notification on June 6, 1969 (*supra*) declaring Arnaldas Street a street for one way traffic, there has been, in my opinion, substantial compliance with the relevant provision in bye-law 11(1)(a), which, as I read it, requires the concurrence of the Commander of Police to be obtained prior to the public notification and not, necessarily, prior to the decision of the municipality leading to such notification.

Held, (2). *As to the argument under* (2) *hereabove* :

(A) The new Municipal Corporations Law 1964 (Law No. 64 of 1964) appears to be legislation enacted because of the existence of exceptional circumstances of internal political anomalousness and I am entitled and bound to take judicial notice of the fact that at the time when the 1965 Bye-Laws (*supra*) were made the same exceptional circumstances had not ceased to exist ; unfortunately they still persist until today.

(B) Moreover, it is expressly stated in the preamble of the said new Law No. 64 of 1964 that it is a Law which was enacted because the Municipal Corporations Law, Cap. 240 as well as all other Laws relating to Municipalities, having ceased to be in force on December 31, 1962, the municipal corporations ceased to exist and it, thus, became " necessary to make provision..... generally the running of municipal affairs " ; and I have no doubt that this expression is wide enough to include within the scope of the statute (*viz.* Law No. 64 of 1964) the regulation of traffic within the municipal limits.

Held, (3). *As to the argument under* (3) *hereabove* :

(A) In my opinion the 1952 Bye-Laws (*supra*) have not been " revived " as counsel has put it, but they were re-enacted by reference as new legislation.

(B) It is, indeed, correct that to legislate by means of refering extensively to the texts of other enactments is not, as a rule, a desirable course (see, also, what is stated regarding legislation by reference in Craies on Statute Law, 6th Ed. pp. 29–32) ; but, on the other hand, bearing in mind that the 1965 Bye-Laws were, obviously, made under the pressure of the events which led to the enactment of Law No. 64 of 1964 (*supra*) and that in legislating by reference to the 1952 Bye-Laws, in relation to the regulation of traffic, there were re-enacted legislative provisions well known to all concerned, for many years past, in all affected areas, and in view, too, of the judgment of the full bench of the Supreme Court in the case of *Andreas Koullapides Ltd. and Others* v. *The Municipality of Nicosia* (1970) 2 C.L.R. 22, I have no difficulty in holding that the 1952 Bye-Laws, including the relevant to this case bye-law 11(1)(a), were validly and properly re-enacted as part of the 1965 Bye-Laws.

Held, (4). *As to the argument under* (4) *hereabove* :

I am most definitely of the view that this is not a case of deprivation in contravention of Article 23 of the Constitution. The declaration of the street in question as a street for one way traffic cannot be treated, in the circumstances of this case, as depriving the proprietors of the petrol filling-station in that street of their relevant proprietory interests ; it could only be said that a deprivation of property has taken place if the declaration of the street in question as a street for one way traffic had entailed the closing down of the station.

Held, (5). *As to the argument* (*abuse or excess of powers*) *under* (5) *hereabove* :—

(A) *After reviewing the facts of the case the learned President went on* :

In the light of all material circumstances in this case and of the principles of law governing the exercise of my relevant jurisdiction, I have reached the conclusion that I have not been satisfied by the applicants that I should interfere with the decision of the respondent municipality to declare Arnaldas Street as a street of one way traffic.

(B) It is in my opinion quite clear that ample consideration was given to the question of how to meet the traffic problems the existence of which led to the decision to declare the street in question as a street for one way traffic ; and that this decision was, finally, taken as a measure which appeared unavoidable.

(C) Before I can interfere with such decision of the respondent I have to be satisfied that the discretion entrusted for the purpose to the respondent has not been properly exercised ; otherwise, so long as the said decision was properly reached within the limits of that discretion, which is a very wide one, indeed, and involves, to a considerable extent, the examination of certain technical aspects, I cannot interfere by virtue of the competence vested in me under Article 146 of the Constitution. In a matter of this nature I cannot substitute own view in the place of that of the respondent as regards the desirability of the solution given to the traffic problems concerned (see *Thymopoulos and Others* v. *The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, at p. 608).

(D) The application of the relevant principles of Administrative Law to situations of this kind is illustrated by the

following three decisions of the Council of State in Greece : Decisions 2474/1964, 1403/1964 and 171/1968 (brief analysis of which cases appears *post* in the judgment). As far as French Administrative Law is concerned the position is very much the same : *Syndicat National Des Automolistes c/ Préfet de Police* (a decision of the Paris Administrative Court dated March 23, 1966, see Droit Administratif, July-August 1966, p. 439).

(E) On the other hand, I would not be entitled, or prepared, to regard the non-adoption by the respondent municipality of a possible, but less effective, alternative solution as a sufficient ground for annulling the subject decision ; the evidence of Mr. Athinodorou, which I accept as very reliable, establishes that this is neither a case in which the appropriate authority could have resorted to another *equally effective* solution (see the decision of the French Council of State in the case of *Commune de Gavarnie c/Benne* of the 22nd February 1963) or one in which such authority took a step in excess, in any way, of what could be lawfully done in the particular circumstances (see the decision of the French Council of State in the case *Lagoutte et Robin* of the 22nd February, 1961).

Recourse dismissed.
No order as to costs.

Cases reffered to :

Andreas Koullapides Ltd. and Others v. *The Municipality of Nicosia* (1970) 2 C.L.R. 22 ;

Thymopoulos and Others v. *The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, at p. 608 ;

Police and *Liveras*, 3 R.S.C.C. 65 ;

Decisions of the Greek Council of State in cases Nos. : 1403/1964, 2474/1964 and 171/1968 ;

Decisions of the French Council of State in cases : Commune de Gararnie c/ Benne, of 22nd February, 1963 ; *Lagoutte et Robin of the 22nd February*, 1961 ;

Decision of the Paris Administrative Court in the case : Syndicat National des Authomobilistes c/ Préfet de Police of the 23rd March, 1966 (see *Droit Administratif, July–August* 1966, *p.* 439).

Recourse.

Recourse against the decision of the respondent to declare Arnaldas Street in Nicosia as a street for one way traffic.

L. Papaphilippou, for the applicant.

K. Michaelides, for the respondent.

Cur. adv. vult.

The following judgment was delivered by :—

TRIANTAFYLLIDES, P. : By this recourse the applicants (applicant No. 1 being a partnership and applicant No. 2 being one of the partners), who are the proprietors of a petrol filling-station in Arnaldas Street in Nicosia, challenge the validity of a decision of the respondent municipality of Nicosia to declare such street as a street for one way traffic, from the direction of Stassinos Avenue towards Archbishop Makarios III Avenue.

The relevant public notification was published on the 6th June, 1969.

This recourse was originally made against, also, the Republic, through the Commander of Police, whose prior concurrence was required for the relevant action on the part of the respondent municipality but during the hearing of the case the recourse was withdrawn and dismissed in so far as the Republic was concerned.

The legislative provision under which the municipality has acted is bye-law 11 (1) (*a*) of the Nicosia Municipal (Traffic) Bye-Laws, 1952, to be referred to herein as the "1952 Bye-Laws" (see No. 85 in the 1952, Subsidiary Legislation), which were re-enacted, by reference, as part of the Nicosia Municipal Bye-laws, 1965, to be referred to herein as the "1965 Bye-Laws" (see No. 199 in the 3rd Supplement to the 1965 Official *Gazette*) ; the 1965 Bye-Laws were amended by the Nicosia Municipal (Amendment) Bye-Laws, 1967, (see No. 879 in the 3rd Supplement to the 1967 Official *Gazette*).

The 1965 Bye-Laws were made under, *inter alia*, section 8 of the Municipal Corporations Law, 1964 (64/64), which re-enacted, by reference, as part thereof, section 126 of the Municipal Corporations Law (Cap. 240), which empowers the making of a bye-law in relation to one way traffic, such as the aforementioned bye-law 11 (1) (*a*) ; previously, since the 31st December, 1962, all the provisions of Cap. 240 had ceased to be in force.

I might deal, at this stage, with one of the submissions of learned counsel for the applicants, *viz.* that the prior concurrence of the Commander of Police, which is required under bye-law 11 (1) (*a*), was not obtained before the Municipal Commission of Nicosia (which was set up under section 37 of Law 64/64) decided on the 5th May, 1969, (see the relevant minutes *exhibit* 11) to declare Arnaldas Street as a street for one way traffic, but was given subsequently on the 28th May, 1969 (see *exhibit* 13), and, so, bye-law 11 (1) (*a*) was not complied with. In my opinion, so long as such concurrence was given prior to the public notification about the declaration of the street as a street for one way traffic there has been substantial compliance with the relevant provision in bye-law 11 (1) (*a*), which, as I read it, requires the concurrence of the Commander of Police to be obtained prior to the public notification and not, necessarily, prior to the decision of the municipality leading to such notification.

On behalf of applicants there have been put forward several other legal arguments against the validity of the *sub judice* administrative action :—

It has been submitted that the 1965 Bye-Laws, made under Law 64/64, have not been validly made, because they were not within the scope of Law 64/64, in view of its nature, as such nature is to be ascertained from the whole of the Law and, in particular, from its preamble.

I do not agree with this submission : Law 64/64, appears to be legislation enacted because of the existence of exceptional circumstances of internal political anomalousness and I am entitled and bound to take judicial notice of the fact that at the time when the 1965 Bye-Laws were made the same exceptional circumstances had not ceased to exist ; unfortunately they still persist until today. Moreover, it is stated expressly in the preamble of Law 64/64 that it is a Law which was enacted because Cap. 240, and all other laws relating to municipal corporations, having ceased to be in force on the 31st December, 1962, the municipal corporations ceased to exist and it, thus, became " necessary to make provision for .... generally the running of municipal affairs " ; and I have no doubt that this expression is wide enough to include within the scope of Law 64/64 the regulation of traffic inside municipal limits.

It has, also, been submitted by counsel for the applicants, in relation to the validity of the 1965 Bye-Laws, that section 126 of Cap. 240 was not re-enacted, by reference, by means

of section 8 of Law 64/64, but only the relevant powers were mentioned therein. As already stated in this judgment, in my view, by virtue of section 8 the provisions of, *inter alia*, the said section 126 were incorporated into Law 64/64. So, I can find no merit in this contention of the applicants.

Another argument of counsel for the applicants is that there could not be " revived ", by reference in the 1965 Bye-Laws, the 1952 Bye-Laws, which had ceased to be in force together with Cap. 240, and that new Bye-Laws ought to have been made in respect of the matters governed by the 1952 Bye-Laws, the full text of which would then have been published in the Official *Gazette*. In my opinion the 1952 Bye-Laws were not " revived " but they were re-enacted by reference as new legislation and, therefore, I cannot agree with counsel for the applicants on this point.

It is, indeed, correct that to legislate by means of referring extensively to the texts of other enactments is not, as a rule, a desirable course (see, also, what is stated regarding legislation by reference in Craies on Statute Law, 6 ed., pp. 29–32) ; but, on the other hand, bearing in mind that the 1965 Bye-Laws were, obviously, made under the pressure of the events which led to the enactment of Law 64/64 and that in legislating by reference to the 1952 Bye-Laws, in relation to the regulation of traffic, there were re-enacted legislative provisions well known to all concerned, for many years past, in all affected areas, and in view, too, of the judgment of the full bench of the Supreme Court in the case of *Andreas Koullapides Ltd. and Others* v. *The Municipality of Nicosia* (1970) 2 C.L.R. 22, I have no difficulty in holding that the 1952 Bye-Laws, including the relevant to this case bye-law 11 (1) (*a*), were validly and properly re-enacted as part of the 1965 Bye-Laws.

I shall deal now with an issue of constitutionality which has been raised on behalf of the applicants :—

It has been submitted by their counsel that they have suffered so very considerable damage to their petrol filling-station business (which includes, also, operating a service station for the purposes of washing, lubricating etc. vehicles) that the declaration of Arnaldas Street as a street for one way traffic amounts, in effect, to a deprivation, in the sense of, and is therefore inconsistent with, the provisions of Article 23 of the Constitution.

I am most definitely of the view that this is not a case of deprivation in contravention of Article 23, because I cannot argee that the declaration of a street as a street for one

way traffic—(and assuming that such an act affects the business of a petrol filling-station in that street)— can be treated, in circumstances such as those of the present case, as depriving the proprietors of the station, the applicants, of their relevant proprietary interests ; it could only be said that a deprivation has taken place if the declaration of the street in question as a street for one way traffic had entailed the closing down of the station. Whether or not such declaration has resulted in the imposition of restrictions or limitations affecting the business of the applicants is a matter which I leave entirely open, as I do not have to decide about it in these proceedings ; anyhow, even assuming that there were imposed any restrictions or limitations they would be constitutional as being permissible under paragraph 3 of Article 23 (see, also, in this respect the analogous case of the *Police* and *Liveras*, 3 R.S.C.C. 65). If the applicants choose to seek compensation under the provisions of Article 23.3 it would then be the first task of the appropriate Court, a civil Court, to decide whether or not the declaration of Arnaldas Street as a street for one way traffic amounts, in the circumstances of the particular case and on a proper construction of Article 23.3, to restrictions or limitations of a nature envisaged by the constitutional provision in question.

The last submission of counsel for the applicants with which I have to deal is that, in the light of all relevant considerations, the respondent municipality has acted in excess or abuse of powers by declaring the street concerned as a street for one way traffic :—

The history of the relevant events is a rather long one and has to be looked upon as a whole. As far as is shown by the material produced before the Court there was, as early as the 26th October, 1965, a meeting of the Traffic Committee, which is a committee comprising representatives of the respondent municipality and of appropriate police authorities, when it was decided (see the minutes *exhibit* 2) that Arnaldas Street should be made a street for one way traffic from Stassinos Avenue towards Archbishop Makarios III Avenue. The Municipal Commission adopted this proposal on the 19th November, 1965 (see the minutes *exhibit* 3). The relevant concurrence of the Commander of Police was sought by letter dated the 7th December, 1965 (*exhibit* 4) but, apparently, the matter was not pursued further until it was considered once again at a meeting of the Municipal Commission on the 17th February, 1967, and at another meeting of the Traffic Committee on the 22nd June, 1967

(see the minutes *exhibit* 16) and the concurrence of the Commander of Police was given on the 7th August, 1967 (see the relevant correspondence *exhibits* 5 *and* 6). The public notification about Arnaldas Street, having been declared as a street for one way traffic was published on the 26th August, 1967.

Then, the matter in question was re-examined at meetings of the Municipal Commission on the 1st September and 26th September, 1967, and as a result, on the 2nd October, 1967, a letter was addressed to the Commander of Police (*exhibit* 7) informing him of the intention of the municipality to abolish the one way traffic arrangement in respect of Arnaldas Street, in view, *inter alia*, of the demolition of a house which brought about an improvement of the situation at the junction of such street with Archbishop Makarios III Avenue. The Commander of Police replied, on the 13th November, 1967, expressing his disagreement (see *exhibit* 8) but, eventually, the Municipal Commission decided on the 15th March, 1968, to proceed with the abolition of the one way traffic arrangement for Arnaldas Street (see the minutes *exhibit* 10) ; and the relevant notification was published on the 5th May, 1968. In adopting this course of action the municipality presumably have taken into account, also, representations made, against the said one way traffic arrangement, by applicant No. 2 ; they were contained in a letter addressed by him to the Commander of Police on the 2nd February, 1968 (*exhibit* 9), copy of which was sent also the municipality.

Later on, it was decided, once again, on the 5th May, 1969, by the Municipal Commission, in view of the need to regulate the traffic in the area, to make Arnaldas Street a street for one way traffic as before (see the minutes *exhibit* 11). The concurrence of the Commander of Police was sought on the 10th May, 1969 (*exhibit* 12) and it was granted on the 28th May, 1969, (see *exhibit* 13). The relevant notification was published on the 6th June, 1969. Just before that, on the 5th June, 1969, there were received written representations in the matter made by applicant No. 2, which are dated the 3rd June, 1969, (*exhibit* 1) ; they do not seem to raise any material point which was not contained in the letter sent by applicant No. 2, as aforesaid, for the same purpose, on the 2nd February, 1968.

A further letter of protest was addressed to the municipality by applicant No. 2 on the 11th June, 1969 (see *exhibit* 14). Its contents were considered at a meeting of the Municipal Commission on the 11th July, 1969 (see the

minutes *exhibit* 15), after the filing of this recourse, and it was decided, after a thorough study of the matter, not to alter the already made one way traffic arrangement in relation to the street concerned. Once the relevant public notification was allowed to remain in force—and that is, in effect, the *sub judice* action of the municipality—I regard the decision reached, as above, on the 11th July, 1969, as being, in essence, of a confirmatory nature only ; otherwise, such action would cease being any longer of an executory nature and this recourse could not be pursued further.

In arguing that the *sub judice* action was taken in excess or abuse of powers counsel for the applicants relied, to a certain extent, on the evidence of a police officer, Mr. Chrysafinis Athinodorou, who was called as a witness by the respondent and who was in charge, at the material time, of the Traffic Branch of the Police in Nicosia District.

In explaining the reasons for which it had become necessary, in his view, to make Arnaldas Street a street for one way traffic, as complained of by the applicants, he agreed that one of the traffic problems concerned, *viz.* that which related to the traffic proceeding along Archbishop Makarios III Avenue towards the busy cross-road of such avenue with Evagoras Avenue, could be faced without declaring Arnaldas Street as a street for one way traffic, but only by prohibiting vehicles proceeding in that direction from turning right into Arnaldas Street ; he added, however, that this method would not have been as effective in meeting the particular difficulty as the course adopted by the respondent. According to his evidence another of the traffic problems that had to be faced was the congestion caused by the traffic which came from Mnassiades Street (which is a side-street joining Archbishop Makarios III Avenue at a point practically across from the point where Arnaldas Street joins the avenue, see the map *exhibit* 17) and was crossing the avenue in order to proceed along Arnaldas Street towards Stassinos Avenue, a thing which now has been avoided by means of the one way street direction which has been given to Arnaldas Street.

It is, in my opinion, quite clear from the evidence of Mr. Athinodorou (who had taken, too, part at the relevant, already mentioned, meetings of the Traffic Committee) and, also, from the relevant records of the respondent municipality, that ample consideration was given to the question of how to meet the traffic problems the existence of which led to the decision to declare Arnaldas Street as a street for one way traffic and that this decision was, finally, taken

as a measure which appeared unavoidable. Before I can interfere with such decision of the respondent I have to be satisfied that the discretion entrusted for the purpose to the respondent has not been properly exercised ; otherwise, so long as the said decision was properly reached within the limits of that discretion, which is a very wide one, indeed, and involves, to a considerable extent, the examination of certain technical aspects, I cannot intervene by virtue of the competence vested in me under Article 146 of the Constitution. In a matter of this nature I cannot substitute my own view in the place of that of the respondent as regards the desirability of the solution given to the traffic problems concerned (see, *inter alia*, *Thymopoulos and Others* v. *The Municipal Committee of Nicosia* (1967) 3 C.L.R. 588, at p. 608.

The application of the relevant principles of Administrative Law to situations of this kind is illustrated by the following three decisions of the Council of State in Greece (Συμβούλιον Ἐπικρατείας):—

In Case 2474/1964 the Council, in relation to the validity of a decision of a local authority for the enlargement of a public square, for, *inter alia*, reasons of better traffic circulation and decongestion of traffic, adopted the view that it could not exercise judicial control, by means of a recourse for annulment—like the present one—over the correctness of the opinion of the authority regarding the need to enlarge the square, inasmuch as there was nothing to show that such opinion had been based on non-existent facts. In Case 1403/1964, in relation to the validity of a decision to extend the length of a street in the public interest, the Council held that such decision, being of a technical nature, could not be made the subject of judicial control so long as there had not been established the existence of any factual misconception or of misuse of powers ; it is interesting to note that the facts in that case are to a certain extent similar to those of the present case, in the sense that there the appropriate Ministry had originally rejected the proposal which had been made by the municipality concerned for the extension of the street and that later on the Ministry decided, after reconsidering the matter, to adopt the proposal ; and this was not treated by the Council of State as an indication of invalidity of the final decision in the matter. Lastly, in Case 171/1968, in connection with the validity of a decision regarding the removal to another position in a square of a kiosk which was being run by a handicapped person, and which removal should not have been approved if there were to be caused any difficulties

to the movement of persons on foot and of vehicles, the Council held that it could not control judicially the evaluation of the relevant factors by the appropriate administrative authority.

As far as French Administrative Law is concerned the position is very much the same : In the case of *Syndicat National Des Automobilistes c/ Préfet de Police* the Paris Administrative Court adopted, when deciding it on the 23rd March, 1966, the same approach, *viz.* that the desirability of the decision challenged was not subject to judicial control (see Droit Administratif, July-August 1966, p. 439).

In the light of all material circumstances in this case and of the principles of law governing the exercise of my relevant jurisdiction, I have reached the conclusion that I have not been satisfied by the applicants that I should interfere with the declaration by the respondent of Arnaldas Street as a street for one way traffic.

In the course of the evidence of Mr. Athinodorou it appeared that there might have been, possibly, an alternative way of meeting to a certain extent the traffic difficulties in question, such as by preventing the traffic in Archbishop Makarios III Avenue from turning right into Arnaldas Street ; but Mr. Athinodorou was quite positive that this measure would not be as effective as making Arnaldas Street a street for one way traffic. I would, therefore, not be entitled, or prepared, to regard the non-adoption by the respondent of a possible, but less effective, alternative solution as a sufficient ground for annulling the *sub judice* decision ; the evidence of Mr. Athinodorou, which I accept as very reliable, establishes that this is neither a case in which the appropriate authority could have resorted to another *equally effective* solution (see the decision of the French Council of State in the case of *Commune de Gavarnie c/ Benne*, on the 22nd February, 1963) or one in which such authority took a step in excess, in any way, of what could be lawfully done in the particular circumstances (see the decision of the French Council of State in the case of *Lagoutte et Robin*, on the 22nd February, 1961.

After Mr. Athinodorou had given evidence the hearing of the case was interrupted so as to afford an opportunity to the respondent of examining possible alternative solutions of the traffic problem concerned. As a result the matter was considered by the Traffic Committee and the Municipal Commission on the 19th September, 1969 (see the

minutes marked X), and it was found that it was necessary to retain the one way traffic arrangement in Arnaldas Street. I have not regarded this as strengthening in any way the position of the respondent. On the other hand, the fact that the respondent, obviously without prejudice, gave further consideration to the matter, in a *bona fide* effort to try once again to eliminate any possible hardship for the applicants, is not something establishing that the *sub judice* decision was not reached after sufficient consideration of such matter ; what took place on the 19th September, 1969, as aforesaid, is in my view irrelevant to the outcome of this recourse; otherwise, that would be a new executory decision preventing this recourse from being further pursued.

For all the foregoing reasons this recourse is dismissed ; but there shall be no order as to costs.

Application dismissed.
No order as to costs.