

1981 April 10

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEODOSSIS IOANNOU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTER OF FINANCE,

Respondent.

(Case No. 222/81).

Administrative Law—Administrative decision based on opinions of experts—Judicial control—Only when there is a misconception of fact by the taking into consideration of non-existing facts or by the failure to take into consideration existing ones the Court can exercise judicial control over such decision—Decision of committee, set up under Greek Communal Chamber Law 4/1962, discontinuing payment of disability pension by relying on report of Medical Board—Normally beyond competence of this Court to examine correctness from a scientific aspect of the report of Medical Board—Within exclusive competence of the administrative organ to decide on the disability of a person and its decision is not reviewable unless there is a reviewable defect—Said Committee and Medical Board did not take into consideration anything non-existent and did not fail to take into consideration anything existing—The Committee exercised duly its discretion and acted within its competence and as provided by Law.

The applicant was on the 12th January, 1957 arrested by the security forces of the colonial regime and was conveyed to Platres Police Station where he was ill treated and as a result sustained personal injuries. After the establishment of the Republic of Cyprus in 1960 and a long time after the enactment of the Dependants of Persons who were killed in, and of victims of the Struggle and Persons Incapacitated therein (Pensions and Extraordinary Allowances Fund) Law, 1962, (Law 4/1962 of the Greek Communal Chamber) he was granted disability

pension. The benefits for incapacity are awarded on the decision of a Committee established under the above law relying on the opinion of a Medical Board set up by law which examines the person concerned. The Committee, relying on the report of the Medical Board which was to the effect that applicant suffered from chronic bronchitis and symptoms of progressing osteoarthritis changes in the spine which could in no way be connected with his illtreatment during the EOKA struggle and that he was in no percentage incapacitated from pursuing his work due to the injuries received during the said struggle, decided to discontinue the grant of a disability pension to the applicant. Hence this recourse.

Counsel for the applicant sought the annulment of the aforesaid decision mainly on the ground of misconception of fact, because it was based on an erroneous factual situation.

Held, that it is only when there is a misconception of fact by the taking into consideration of non-existing facts or by the failure to take into consideration existing ones that the Court can exercise judicial control over decisions based on opinions of experts; that it is normally beyond the competence of this Court in a case of this nature to examine the correctness from a scientific aspect of the report of the Medical Board; that it is within the exclusive competence of the administrative organ to decide on the disability of a person (ικανότητας ή ανικανότητας) and its decision is not reviewable unless there is a reviewable defect; that in this case the Committee and the Medical Board, on the opinion of which the Committee acted, did not take into consideration anything non-existent and did not fail to take into consideration anything existing; that the inquiry was not defective; that this Court is not satisfied that the Medical Board did not carry out a proper examination; that the Committee exercised duly its discretion and acted within their competence and as provided by law; accordingly the recourse should be dismissed.

Application dismissed.

Cases referred to:

- Republic v. Georghiades* (1972) 3 C.L.R. 594;
- Pitsillides v. Republic* (1978) 3 C.L.R. 99;
- Diosmis v. Republic* (1975) 3 C.L.R. 461 at p. 465;
- Case Nos. 2051/70 and 828/49 of the Greek Council of State.*

Recourse.

Recourse against the decision of the respondent to discontinue the grant of disability pension to applicant.

C. L. Clerides, for the applicant.

G. Constantinou (Miss), Counsel of the Republic, for the respondent. 5

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant, a 60-year old person from Agros, was arrested by the security forces of the colonial regime on 12.1.1957 and was conveyed to Platres Police Station where he was illtreated and as a result thereof sustained personal injuries. After the establishment of the Republic and a long time after the enactment of the Dependants of Persons who were Killed in, and of Victims of the Struggle and Persons Incapacitated therein (Pensions and Extraordinary Allowances Fund) Law of 1962, he was granted disability pension. 10 15

The benefits for incapacity are awarded on the decision of a committee established under the relevant law relying on the opinion of a Medical Board set up by law which examines the person concerned. 20

On 26.10.1973 the committee, relying on a medical report of the Medical Board, decided to discontinue the grant of pension to the applicant as he had no incapacity resulting from the injuries sustained in 1957. He was re-examined by the Medical Board on 12.8.1975; on the same day the committee arrived at the same decision as in 1973 not to grant any more pension to the applicant. 25

In 1976 the applicant applied for reconsideration of his case. He was examined by the Medical Board on 7.10.1976 and the committee took the same decision as in 1975 which was communicated to him on 13.12.1976. The applicant was aggrieved and he filed Recourse No. 36/77 seeking the annulment of that decision. That case was withdrawn on the undertaking of re-examination afresh of the matter on production by the applicant of a new medical certificate to the committee. 30 35

On 2.10.1978 the applicant's advocate submitted to the committee a medical report issued by Dr. Ioannou, an orthopaedic

surgeon in private practice. This report is blue 145-146 in the file, exhibit No. 1. The Medical Board re-examined the applicant and reached the opinion that he had no incapacity at all. The committee on 25.1.1979 decided that there was no
5 ground for changing their previous decision of discontinuance of the pension granted in the past to the applicant. This decision was challenged in Recourse No. 184/79 which, however, was ultimately withdrawn and the committee undertook again to re-examine the matter

10 The Medical Board established under the law re-examined the applicant on 16.4.1981. The Board had before them the medical certificates issued by Dr. Ioannou and the medical report issued by Dr. Stelios Stylianou, a specialist pathologist in the government service Dr. Stylianou certified that the
15 applicant is suffering from chronic bronchitis. In his report Dr. Ioannou stated that the applicant is a slightly overweighted person and that the X-rays taken by him revealed spondylotic changes in most lumbar vertebrae and diminution of the vertebral spaces between 14-15 and L5-S1 In his opinion the findings
20 from the lumbar spine are degenerative and are post-traumatic in nature. The Medical Board, consisting of three doctors, re-examined the applicant bearing in mind all the reports in the file and found that the applicant suffers from chronic bronchitis and symptoms of progressing osteoarthritic changes in
25 the spine which, however, can in no way be connected with his illtreatment during the EOKA struggle and that he is in no percentage incapacitated from pursuing his work due to the injuries received during the EOKA struggle.

The committee on 14.5.1981, relying on the report of the
30 Medical Board, decided to "insist to its previous decision for discontinuance of his pension".

The applicant by the present recourse seeks the annulment of the aforesaid decision on the following grounds:-

- 35 (a) Misconception of fact, as it was based on erroneous factual situation,
- (b) Defective inquiry—The Medical Board failed to consider the X-rays taken by Dr. Ioannou and they failed to take into consideration all the elements and facts pertaining to the case; and,

(c) Defective exercise of their discretion.

The administrative law of this country in its evolution adopted many of the principles of the administrative law developed by the case law of the Greek Council of State. A decision of the administration is not reviewable of determination on the merits. In the Digest of Decisions of the Greek Council of State for the years 1961–1963, Volume A. (A–N) p. 77, we read:–

“22. The ground for annulment directed against the administration’s determination of the facts is rejected as unacceptable. 80, 81, 362/61, 339, 930, 953, 1412, 1720–2, 1778/62, 7,165, 443, 1659, 1861/63”.

The question of misconception of fact is summed up as follows in the Conclusions of the Case Law of the Greek Council of State (1929–1959), p. 268:–

“Διὰ τὴν ὑπαρξιν πλάνης περὶ τὰ πράγματα ἀπαιτεῖται ἀντικειμενικὴ ἀνυπαρξία τῶν ἐφ’ ὧν ἡ πράξις ἐρείδεται πραγματικῶν περιστατικῶν καὶ προϋποθέσεων: 2134(52), διαπιστωμένη ἄνευ τοῦ στοιχείου τῆς ὑποκειμενικῆς κρίσεως: 1089(46). Δὲν ὑφίσταται πλάνη περὶ τὰ πράγματα ὡσάκις ἡ Διοίκησις ἐκτιμᾷ κατ’ οὐσίαν διάφορα, καὶ ἀντιφατικὰ στοιχεία ὧν ἡ στάθμισις δύναται κατ’ ἀρχὴν νὰ ὀδηγῇ καὶ εἰς τὸ συμπέρασμα εἰς ὃ ἤχθη ἡ Διοίκησις. Τοιαύτη ἐκτίμησις δὲν ἐλέγχεται κατ’ οὐσίαν ἐν τῇ ἀκυρωτικῇ δίκῃ. (βλ. καὶ 1474(56))”.

(“For the existence of a misconception of fact there is required an objective non-existence of the actual circumstances and prerequisites upon which the act is based (2134/52) which is ascertained in the absence of the element of the subjective test: 1089/46). There does not exist a misconception of fact when the administration determines items which in substance are different and conflicting; whose determination may in principle lead to the conclusion arrived at by the administration. The substance of such determination is not controlled in the annulment trial (see also 1474/56))”. See *Republic v. Lefcos Georghiades*, (1972) 3 C.L.R. 594).

With the advancement of science the ordinary and general knowledge of a person are not sufficient to deal with matters which are considered technical or specialized. Special know-

ledge or capacities acquired by scientific study, training and experience are required for the facing, examination and determination of such matters. The value of specialized knowledge is uncontestable, being the product, as it is, of intensive study, research and experience beyond the range of the ordinary man. In general, neither the administrative organ nor this Court can pass a judgment on the opinions of a body of experts. It is only when there is a misconception of fact by the taking into consideration of non-existing facts or by the failure to take into consideration existing ones that the Court can exercise judicial control over decisions based on such opinions.

The non-reviewable, subject to what was stated above, of the conclusions of the experts and particularly of medical experts, is well settled. (D. P. Economou—Judicial Control of Administrative Power, 1966, p. 253). It is normally beyond the competence of this Court in a case of this nature to examine the correctness from a scientific aspect of the report of the Medical Board. (See Decision No. 2051/70 of the Greek Council of State; *Pitsillides v. Republic*, (1978) 3 C.L.R. 99; *Kyriacos Diosmis v. Republic*, (1975) 3 C.L.R. 461, 465). It is within the exclusive competence of the administrative organ to decide on the disability of a person (ικανότης ἢ ἀνικανότης) and its decision is not reviewable unless there is a reviewable defect. (Case No. 828/49 of the Greek Council of State).

Having carefully considered all the facts and circumstances pertaining to the case and the arguments advanced in the addresses of counsel, I am of the opinion that the committee and the Medical Board, on the opinion of which the committee acted, did not take into consideration anything non-existent and did not fail to take into consideration anything existing; the inquiry was not defective; the members of the Medical Board addressed their mind to the medical certificate of Dr. Ioannou. Truly they did not ask from Dr. Ioannou the X-rays he took; the applicant, however, did not submit such X-rays to the Board; I am not satisfied that the Medical Board did not carry out a proper examination. The committee exercised duly its discretion. They acted within their competence and as provided by law.

For the aforesaid reasons this recourse fails. In the circumstances I make no order as to costs.

Application dismissed. No order as to costs.