

1982 June 26

[TRIANTAFYLIDES, P.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMOS ARISTIDOU, PERSONALLY AND AS ADMINISTRATOR OF THE ESTATE OF THE DECEASED SPIROS D. ARISTIDOU AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH

1. THE GRANTS COMMITTEE,
2. THE MINISTER OF FINANCE,

Respondents.

(Case No. 192/76).

Administrative Law—Inquiry—Due inquiry—Presumption that administrative decision reached after correct ascertainment of relevant facts—Rebutted if there exists at least a probability that a misconception has led to the taking of the decision complained of—Sub judice decision based on information contained in two conflicting reports—Annulled for absence of due inquiry and due to existence of a quite reasonable probability that a misconception has led to its taking. 5

The applicants in this recourse, who were the parents and brother and sister of the deceased Spyros Aristidou applied to the respondent Committee for the payment to them of a dependants' allowance in respect of his death. The respondent Committee dismissed the application because it found that the deceased was not killed while being on lawful active service in the National Guard but due to his participation in the abortive coup d'etat of 15th July, 1974. Hence this recourse. 10 15

In arriving at the sub judice decision the respondent Committee took into account, regarding the circumstances in which the deceased was killed, reports of the National Guard and of the Central Information Service (KYP), which were in conflict 20

on the vital issue of whether or no the deceased at the material time was participating in an attack against security forces loyal to the lawful Government of the Republic.

5 *Held*, that the respondent Committee could not have acted safely on the basis of either of the aforementioned two conflicting reports, of the National Guard and of KYP, and that it failed to carry out a due inquiry in order to ascertain the exact circumstances in which the deceased was shot; consequently, its sub judice decision has to be annulled, in any event, on this ground.

10 *Held*, further, that the presumption that an administrative decision is reached after a correct ascertainment of relevant facts can be rebutted if a litigant succeeds in establishing that there exists at least a probability that a misconception has led to the taking of the decision complained of; that in this case there
15 exists a quite reasonable probability that a factual misconception has led to the taking of the sub judice decision and for this reason, too, it should be annulled.

Sub judice decision annulled.

Cases referred to:

20 *Mallouros v. Electricity Authority of Cyprus* (1974) 3 C.L.R. 220 at p. 224;

Andreou v. Cyprus Broadcasting Corporation (1976) 3 C.L.R. 36 at p. 42.

Recourse.

25 Recourse against the decision of the respondents to dismiss applicants' application for the grant to them of a dependants' allowance in respect of the death of Spiros Aristidou.

A. Papadopoulos, for the applicants.

Gl. Michaelides, for the respondents.

30 *Cur. adv. vult.*

TRIANTAFYLLIDES P. read the following judgment. By means of the present recourse the applicants challenge, in effect, the decision of the respondent Grants Committee, which comes under the respondent Minister of Finance, by means of which
35 it was decided to dismiss their application for the payment to them of a dependants' allowance in respect of the death of

Spyros Aristidou, their son (applicants 1 and 2 are his father and mother, respectively) and brother (applicant 3 is his sister).

The said Committee dismissed the application of the applicants, which was made under section 19 of the National Guard Law, 1964 (Law 20/64), as amended by the National Guard (Amendment) Law, 1975 (Law 24/75), and under the National Guard (Dependants of Persons Killed or Incapacitated) (Allowances) Regulations, because it found that the deceased was not killed while being on lawful active service in the National Guard but due to his participation in the abortive coup d' etat of 15th July 1974.

The deceased had enlisted in the National Guard on 21st July 1973 and he was serving in it as sergeant until the time of his death on 21st July 1974. On 15th July 1974, while he was at a military camp at Polemidhia, near Limassol, he, together with other national guardsmen, proceeded, under the orders of an officer, to the premises of the Military Command in Limassol where he was shot at by someone; and having been seriously wounded he was taken to the Limassol Hospital where he died on 21st July 1974.

As it appears from the Opposition the respondent Grants Committee in arriving at its sub judice decision took into account, regarding the circumstances in which the deceased was killed, reports of the National Guard and of the Central Information Service (KYP). The latter report appears to be in conflict with the former on the vital issue of whether or not the deceased at the material time was participating in an attack against security forces loyal to the lawful Government of the Republic. The report of KYP, on which the respondent Committee seems to have based its decision, states that in fact the deceased was participating in an attack as aforesaid, whereas the report of the National Guard states the contrary, namely that the deceased and the other national guardsmen had been sent to the premises of the Military Command in Limassol in order to clean up the litter that was lying about in such premises due to fighting that had taken place there earlier.

At the hearing of this case before me counsel for the applicants called two witnesses who gave evidence on oath supporting

the version to be found in the report of the National Guard. The evidence of these two witnesses, one of whom was not even cross-examined, was not contradicted by any evidence called by the respondents.

- 5 Having in mind all the foregoing I have come to the conclusion that the respondent Committee could not have acted safely on the basis of either of the aforementioned two conflicting reports, of the National Guard and of KYP and that it failed to carry out a due inquiry in order to ascertain the exact circum-
10 stances in which the deceased was shot; consequently, its sub
 judice decision has to be annulled, in any event, on this ground.

In the case of *Mallouros v. The Electricity Authority of Cyprus*, (1974) 3 C.L.R. 220, there were stated the following (at p. 224):

- 15 “In this respect, I was referred to the case of *HjiMichael*
 v. The Republic (1972) 3 C.L.R. 246, at p. 252, where it
 is stated—‘According to the principles of administrative
 law there exists a presumption that an administrative
20 decision is reached after a correct ascertainment of relevant
 facts; but such presumption can be rebutted if a litigant
 succeeds in establishing that there exists at least a prob-
 ability that a misconception has led to the taking of the
 decision complained of (see, inter alia, *Stassinopoulos*
 on *The Law of Administrative Acts*, p. 304, et seq.)’ ”.

- 25 Useful reference may be made, also, in this respect, to *Andreou*
 v. Cyprus Broadcasting Corporation, (1976) 3 C.L.R. 36, 42.

In the circumstances of this case I am satisfied that, at any rate, there exists a quite reasonable probability that a factual misconception has led to the taking of the sub judice decision and for this reason, too, it should be annulled.

- 30 In the result, this recourse succeeds; but I will make no order
 as to its costs.

Sub judice decision annulled.
No order as to costs.