

1985 November 12

[A. LOIZOU, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

GEORGHIOS KAIZER, PERSONALLY AND/OR  
AS CO-ADMINISTRATOR OF THE ESTATE OF  
MISSING PERSON CHRISTOS NIKOLAS KAIZER.

*Applicant,*

v.

THE COMMITTEE FOR THE APPOINTMENT OF  
ADMINISTRATOR OF THE ESTATE OF  
MISSING PERSONS,

*Respondent.*

*(Case No. 191/83).*

---

*The Missing Persons (Temporary Provisions) Law 77/79—S. 5(5)—The functions of the Committee for the Appointment of Administrator of the Estate of a Missing Person thereunder belong to the domain of public Law—A wife of a missing person is a dependant within the meaning of said section—Nothing in the law prevents a dependant, who is also a co-administrator of the property of the missing person, to submit a unilateral application to the Committee—Preservation of property of missing person—Is only one of the considerations to be taken into account in determining how his income is to be disposed.*

*Natural Justice—Right to be heard—Rule not applicable with regard to purely administrative matters.*

On the 23.7.80 the applicant and Froso Kaizer, the wife of the missing person Christos Kaizer, were appointed under s. 4 of the Missing Persons (Temporary Provisions) Law 77/79 as administrators of the estate of the said missing person.

By joint application dated 27.5.1980 they asked the

respondent Committee that out of the monthly salary of the missing person an amount of £20 be paid to his mother and the balance to his wife. The Committee decided on 23.7.1980 that out of the amount of the said salary, totalling at the time £301.220 mils, £20 be paid to the mother of the missing person, £120 to his wife Froso Kaizer and the balance be lodged in the name of the missing person.

On the 12.7.80 Froso Kaizer asked to receive retrospectively the salaries of her husband as from July 1974 until April 1978. She also asked an increase of the said amount of £120 that she was then receiving.

On the 7.10.82 the applicant was invited to the office of the Committee's Secretary who informed him of the said application by the wife of the missing person. The applicant expressed his disagreement with the application.

On 15.2.83 the respondent Committee taking into consideration that Froso Kaizer was the wife of the missing person, that the latter's salary had gone up to £416.780 mils, that the cost of living had gone up, that Froso Kaizer was of weak health, incurring expenses for doctors and medicines and that she had bought a flat by monthly instalments in order to solve her housing problems decided to increase as from 1.8.82 the amount of £120 to the one half of the net salary received from time to time by the missing person so long as she continues to be his wife.

The said decision was communicated to the administrators of the missing person by letter dated 4.3.83. On the 28.3.83 the applicant wrote to the Committee stating the grounds of his objections to the said decision. The Committee, however, at its meeting on the 6.4.83 decided inter alia not to vary its said decision.

As a result the present recourse, which is directed against both the decision dated 15.2.83 and the decision dated 6.4.83, was filed.

The following are in short the grounds of law relied upon by applicant: (1) Violation of the Rules of Natural Justice inasmuch as the applicant had not been given the right to be heard. Section 5(5) of the said Law 77/79 pre-

supposes a joint application by the administrators. (2) Misconception of fact in that (a) The Committee ignored its previous decision to entertain applications only if jointly made by both administrators, (b) The Committee failed to carry out a due inquiry (c) The Committee ignored the interests of the missing person and (d) The interested party deceived both the Committee and the applicant. This alludes mainly to the original application whereby it was asked that apart of the £20 to the mother of the missing person, the balance of his salary be paid to the wife of the missing person, i.e. the interested party (3) The interested party because of her income and property could not be considered as a dependant person within the meaning of S. 5(5) of Law 77/79.

*Held*, dismissing the recourse (1) As regards ground (1): The rules of Natural Justice were not violated. No duty is cast upon administrative bodies with regard to purely administrative matters to afford the opportunity claimed by the applicant. In any event in this case the applicants was given the opportunity to express his views. There is nothing in Law 77/79 excluding a unilateral application by a dependant of a missing person.

(2) As regards ground 2(a) above: In view of the strained relation between the applicant and the interested party it was impossible to expect a joint application by them.

(3) As regards ground 2(b) above: In the circumstances of this case no one can validly allege that there has been no due inquiry.

(4) As regards ground 2(c) above: The interests of the missing person were not ignored. One should not lose sight of the fact that the interested party is the wife of the missing person and that had this tragedy not fallen upon them they would be living together enjoying the fruits of their labours. It would be wrong to assume that in such a case there would have been followed such a rigid separation of property as that suggested by the applicant. The preservation of the property of a missing per-

son is one of the considerations; for a married couple the wife is entitled to the same benefits that she would have, had he not been missing.

5 (5) As regards ground 2(d): The allegations in this ground are not born out by the facts and circumstances of this case.

10 (6) As regards ground 3: There can be no doubt that the wife of a missing person is a dependant person within the meaning of section 5(5) of the Law, but the personal income of the wife and her other property is one of the factors to be taken into consideration by the respondent Committee in the exercise of its wide discretion given to it by the Law.

15 *Recourse dismissed.*  
*No order as to costs.*

Cases referred to:

*Group of Five Bus Tour Ltd. v. The Republic* (1983) 3 C.L.R. 793;

*Kontemeniotis v. C.B.C.* (1982) 3 C.L.R. 1027;

20 *The Republic v. Georghiades* (1972) 3 C.L.R. 594;

*Haviaras v. The Republic* (1983) 3 C.L.R. 345;

*Christodoulou v. The Republic* (1984) 3 C.L.R. 865;

*Stylianides v. The Republic* (1985) 3 C.L.R. 518.

**Recourse.**

25 Recourse against the decision of the respondent whereby the amount paid out of the movables of the missing person Christos N. Kaizer to his wife was increased to the one half of his monthly salary.

*L. Papaphilippou*, for the applicant.

30 *Cl. Theodoulou (Mrs.)*, Senior Counsel of the Republic, for the respondents.

A. S. Angelides, for the interested party.

*Cur. adv. vult.*

A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks: (1) A declaration of the Court that the act and or decision of the respondent Committee communicated to him by letter dated the 4th March, 1983, by which it decided to increase, as from the 1st August 1982 the amount which was paid out of the movables of the missing person Christos Nicola Kaizer, to Froso Kaizer, his wife to the one half of his monthly salary, is null and void and of no effect whatsoever, (2) A declaration of the Court that the act or decision of the respondent Committee dated 9th April 1983, whereby it decided not to vary the decision referred to in relief No. 1 and not to annul the monthly payment of £120 to Froso Kaizer out of the movables of the said missing person, is null and void and of no effect whatsoever.

The applicant and Froso Kaizer, were on the 23rd July, 1980, upon an application made to that effect, appointed by the respondent Committee, under the provisions of Section 4 of the Missing Persons (Temporary Provisions) Law, 1979 (Law No. 77 of 1979)—hereinafter to be referred to as the Law, as administrators of the estate of the said missing person.

By joint application, dated the 27th May, 1980, they asked the respondent Committee to approve that out of the monthly salary of the missing person, an amount of £20 be paid monthly as assistance to his mother Paraskevi Kaizer, then aged 80, who was partly dependent of him and that the rest of the salary be paid to the wife of the missing person Mr. Froso Kaizer. The respondent Committee examined the matter at its meeting of the 23rd July 1980, and decided that out of the total amount of £301.220 mls which the missing person was receiving net as salary as from the 1st June 1980, an amount of £20 be paid to his mother and an amount of £120 to his wife and the rest be lodged in the name of the missing person. This decision of the respondent Committee was communicated to the administrators by letter dated 30th July 1980.

On the 12th July 1982, Froso Kaizer wrote to the respondent Committee and asked to receive retrospectively the salaries of the missing person as from July 1974 until April 1978. She also asked an increase of the approved by them amount of £120, that she was then receiving.

The respondent Committee at its meeting of the 5th August 1982, decided to ask her to submit a new application signed by both administrators before proceeding to examine her application and communicated its decision to her on the 9th August 1982.

On the 25th August 1982, she wrote however, once more to the respondent Committee and asked for their decision on her application. On the 7th October, 1982, the secretary of the respondent Committee invited the applicant to his office and placed before him the application of the wife he stated that he objected to any increase in the allowance to the wife of his missing brother and that he considered the amount of £120 which was allowed to her, as being excessive, given that she herself was working as a secondary school-teacher. Also that from April 1978, to August 1980, she was receiving the whole of the salary of her missing husband and that although there was the decision of the respondent Committee to receive £120 per month, yet from the 1st June 1980, to August 1980, she appropriated the whole of his salary and said that in case her claim was satisfied he would make a recourse to the Court and in fact ask for the reduction of the amount of £120.

On the 25th February 1983, the respondent Committee considered the application of Froso Kaizer in the light of what the applicant had said and after taking into consideration that she was the wife of the missing person and the cost of living had gone up and that his salary from £301.220 mils rose to £416.780 mils net, that that amount was income and not capital of the missing person that she was of weak health and was incurring expenses for doctors and medicines and that she was also herself a displaced person and that she had bought by monthly instalments a flat in order to solve her housing problem, the Committee decided to increase as from 1st August 1982

the amount of £120 to the one half of the net salary received from time to time by the missing person so long as she continued to be his wife. As regards, however, her claim to receive retrospectively the salaries of her missing husband the respondent Committee asked to be informed if the allegations of the applicant, that during the period from April 1978 to August 1980 she was receiving the whole of his salary, were true. 5

This decision was communicated to the administrators by letter dated 4th March, 1983, copy of which is appended to the application and it contains the sub judice decision subject matter of prayer No. 1. 10

In relation to the contents of the aforesaid letter the wife visited the office of the respondent Committee on the 10th March, 1983 and mentioned that the salary which was paid to her husband by the Treasury between the 1st July 1974 until the 1st March, 1978, amounting to £6,061.440 mils was deposited in his name with STELMEK which appears to be the Secondary School-teachers Cooperative Society. She also mentioned that his salaries amounting to £5,594.655 mils, received between the 1st April 1978, till the 31st May, 1980 were used by her and that she herself also used his salaries for the months of June, and August 1980 amounting to £833.260 mils. 15 20

On the 28th March, 1983, the applicant through his present lawyer wrote to the respondent Committee objecting to its decision of the 4th March, 1983, and copy of this letter is appended to the application containing, as it is stated therein, the facts upon which the objection was based and facts relevant to the decision objected to with particular reference to the financial position of the wife in full details including the purchase of the flat, the sale of a building-site etc., but I feel that I need not refer to its contents verbatim as it will only make this judgment unnecessarily longer. 25 30 35

The respondent Committee at its meeting of the 6th April 1983, and after taking into consideration the contents of the aforesaid letter of counsel for the applicant decided:- (1) that there was no serious reason to vary its decision of the 25th February 1983. (2) As regards the 40

amounts which the wife of the missing person withheld during the period 1st April 1978 till 31st August 1980, the respondent Committee considered that (a) for the period 1st April, 1978 till 18th October, 1979, inclusive, it had no competence to take any decision as they refer to a period before its establishment under the relevant Law, and (b) as regards the period 19th October 1979 till 31st August 1980, the respondent Committee would examine if the wife of the missing person should refund to his account the whole sum which she received during that period or part of it after inviting her to express her views within one month.

The aforesaid decision was communicated to Mr. Pappalippou on the 9th April 1983 and with copies to the two administrators. Prayer 2, refers to this decision. (Exhibit 10).

The first ground of law relied upon by the applicant is that there has been a violation of the Rules of Natural Justice inasmuch as the respondent Committee decided upon the application of the interested party without giving him the right to be heard. It was argued that section 5(5) of the Law provides that the administrators pay to the dependant such sum in such a manner as it will be approved by the Committee. This pre-supposes a joint action by the administrators and as the application of the interested party was made by her alone they ought to have heard him even if it was taken to have been made by her in her capacity of co-administratrix.

As regards the principles governing the Rules of Natural Justice in general, one may turn to a series of authorities in which they were expounded and discussed at length. In the *Group of Five Bus Tour Ltd., v. The Republic* (1983) 3 C.L.R. 793, at p. 809, I adopted and followed what was said in *Kontemeniotis v. C.B.C* (1982) 3 C.L.R. 1027 and *The Republic v. Lefkos Georghiades* (1972) 3 C.L.R. 594. For the purposes of this recourse it is enough if it is pointed out that no duty is cast upon administrative bodies with regard to purely administrative matters and the issue before the Committee was a purely administrative one if at all. Reference for the same subject may also be made to the



more recent cases of *Haviaras v. The Republic* (1983) 3 C.L.R. 345, *Christodoulou v. The Republic* (1984) 3 C.L.R. 865 and *Stylianides v. The Republic* (1985) 3 C.L.R. 518. The subject from the academic point of view and the modern trends regarding it is analyzed in Stassinopoulos *The Right of Defence Before Administrative Bodies* (1974). 5

If, however, this term is used in the sense that there should have been a joint application by the co-administrators before the respondent Committee entertained the matter, this however desirable might be it was in the circumstances impossible and there is nothing in the Law to exclude the unilateral submission of an application by a dependant who happens to be also a co-administrator for the regulation to say the least of matters relating to the amount the respondent Committee should approve for such dependant to receive. 10 15

In any event, in the present case the applicant was duly informed by the respondent Committee and was given the opportunity to express his views, both in writing and orally in person and accompanied by his lawyer though a lawyer himself as well. This ground therefore cannot succeed. 20

The second ground of Law raised on behalf of the applicant is that there has been a misconception of fact because:

(a) The respondent Committee ignored their previous decision to entertain applications only if jointly made by both administrators and with the relevant facts set out therein in full. 25

(b) They failed to carry out a due inquiry and they were misled by the contents of the application of the interested party, dated 27th August, 1980, (exhibit 5); they did not examine the contents of the letter of the applicant dated the 28th March, 1983, (exhibit 9) in which in effect he was putting forward his objections and the grounds thereof to any increase of the amount they had approved for the interested party to receive and that she had sufficient means of her own and a big salary. 30 35

(c) That the administrators manage and preserve the property of a missing person until his fate is ascertained. If he is alive and returns his property will be handed over

to him. If it is ascertained that he is not alive then his property and his income will devolve to his lawful heirs, hence the establishment of such a Committee under the Law and that in the present case the interests of the missing person were ignored, and,

5 (d) That the interested party deceived, both the co-administrator and the respondent Committee which based its decision on untrue facts. This alludes apparently and mainly to the original application submitted jointly by the applicant and the interested party to the respondent Committee, by which they were asking it to approve besides the payment of £20 as assistance to the mother of the applicant and the missing person, the rest of the salary totalling then £301.220 mils to the interested party.

15 As regards ground 2(a) hereinabove set out it became apparent that because of the strained relations of the applicant and the interested party it was impossible to expect a joint application by them. Instead, the respondent Committee gave to the applicant the opportunity to express his views and make any representations both oral and in writing that he wished to do and it was after he did so, that they considered the matter and decided upon the application of the applicant.

25 As regards ground 2(b) the applicant was informed and he put forward the grounds of his objections. The respondent Committee then approved the increase of the amount the interested party was receiving out of the salary of the missing person on the basis of the letters dated the 12th July 1982, and 25th August 1982, and after hearing his objections including those contained in the letter of his counsel dated the 28th March, 1983, exhibit 9. That the latter exhibit was examined is evident from the letter of the respondent Committee, dated the 9th April, 1983, exhibit 10, which was sent to the applicant's counsel in reply thereto. To my mind no-one can validly allege that in the present case there has been no due inquiry carried out by the respondent Committee.

40 With regard to ground 2(c) I cannot accept that the interests of the missing person were ignored in any way. On the contrary the respondent Committee took cogni-

zance of all the circumstances of the case including the financial position of the interested party and allowed her to receive originally less than the one half of the net salary of the missing person and later the one half, the other half having it deposited with a Savings Bank. 5

One should not lose sight of the fact that the interested party is the lawful wife of the missing person and that had this tragedy not fallen on them they would, and there is nothing to suggest the contrary, be living together and sharing the fruits of their labours, and the joys of their marital union. It would be wrong to assume that had they been living together there would have been followed such a rigid separation of property as the applicant by the present recourse suggests that it should be observed. 10

Moreover I do not share the view advanced on behalf of the applicant that the main consideration in the administration of the estate of a missing person is the preservation of his property so that he will find same when he returns or that his heirs will inherit if ultimately he is found not to be alive. Admittedly, that is one of the considerations, but for a married couple the wife is entitled to the same benefits that she would have had, had he not been missing and had he been living with her, though the comforts that his income may give her cannot compensate her for his absence or relieve her of the pain caused by the agony of not knowing of his fate. 15 20 25

The allegations contained in ground 2(d) are not born out by the facts and circumstances of the case. I do not accept that the interested party deceived or made any effort to that direction or could deceive either the respondent Committee or the applicant. They both knew that she was a school-mistress in the government service and this is apparent from the relevant correspondence and the rest of the material before them. The applicant was her brother-in-law and cannot but be taken to have know about her professional status all along. Apart from any other consideration this is born out from the letter of his counsel of the 28th March, 1983. As regards the respondent Committee, it is clear from the letter of the 15th September 1980, exhibit 6, by which they were asking the 30 35 40

advocate of the interested party to inform them inter alia whether their client was receiving the salary of a school-mistress as they had been informed and if yes, the amount of such salary. Moreover such a Committee consisting of  
5 civil servants could be presumed to know about the salary of a non-qualified school-mistress.

The third ground of Law relied upon on behalf of the applicant was that the wife because of her income and property she could not be considered a dependant person,  
10 as defined in Section 5(5) of the Law and consequently the decision to approve her receiving half the net salary of the missing person was wrong. There can be no doubt that the wife of a missing person is a dependant person within the meaning of Section 5(5) of the Law, but the personal  
15 income of the wife and her other property is one of the factors to be taken into consideration by the respondent Committee in the exercise of its wide discretion given to it by the Law.

Having considered the facts and circumstances of the  
20 present case and the arguments advanced, I have come to the conclusion that this recourse should fail as there has been neither misconception of fact nor is it contrary to Law including the General Principles of Administrative Law. The respondent Committee thoroughly investigated  
25 the matter before reaching any of its decisions, afforded the applicant every opportunity to be heard as part in my view of their effort to examine in depth the matter, and the sub judice decisions were reasonably open to them.

I have proceeded on the assumption that the function of  
30 the respondent Committee under Section 5(5) of the Law is within the domain of Public Law and I do not consider it essential to say anything more in view of the conclusions that I reached on the substance of the recourse.

For all the above reasons the recourse fails and is here-  
35 by dismissed with no order as to costs.

*Recourse dismissed with  
no order as to costs.*