1987 July 4

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ANDRONICOS SPYROU,

Applicant,

v.

1. THE REPUBLIC OF CYPRUS,
2. THE SERVICE FOR THE CARE AND REHABILITATION OF DISPLACED PERSONS,

Respondents.

(Case No. 217/79).

Administrative Law — Misconception of fact — Exists when decision taken on basis of non existent facts — Failure of due inquiry causing lack of knowledge amounts to a misconception of fact — The evaluation of facts is the province of administration — There does not exist a misconception, when the administration determines conflicting or different material — In this case material supporting a different outcome than the one reached by the respondents were neither considered nor evaluated — Such failure of due inquiry created grave doubt as to the correctness of the findings of fact made by the respondents — Annulment of sub judice decision.

Administrative Law — Misconception of fact — Burden to satisfy Court that such a misconception of fact exists or burden of raising a doubt in the mind of the Court in this respect lies on the applicant.

Administrative Law — Misconception of fact — Doubt as to the correctness of a finding of fact by the administration — Court may order evidence or annul the decision.

Administrative Law — Evaluation of facts — Judicial control — Principles applicable.

The applicant, who was born at Pighenia village, obtained, following the Turkish invasion of Cyprus, a refugee identity card, having stated that his place of abode at and before the Turkish invasion was Morphou town.

Some time later the respondents cancelled the identity card on the ground that the applicant was not residing in Morphou at the material time.

The applicant applied for regranting to him of the identity card. The application was turned down on the ground that his place of abode at the material time was Pighenia village.

The applicant renewed his request, but, once again, after a new inquiry, the respondents turned down the application, this time on the ground that the applicant's place of abode at the material time was the village of Kato Pyrghos

Hence this recourse. It appears that in reaching the sub judice decision the respondents relied on a certificate dated 8.3.79 by the chairman of the village Commission of Kato Pyrghos to the effect that at the material time the applicant was residing at Kato Pyrghos.

It must be noted that from perusal of the file of the administration it was established that, apart from the aforesaid certificate, the respondents had before them: (a) Certificate by Elias M. Eliades, Court bailiff at the Morphou Court until the invasion, that at the time applicant was residing at Souliou 6 Morphou (Eliades was residing at Souliou 17). (b) Certificate to the same effect as that of Eliades by A. Hadjicharalambous, who was residing at Souliou 1, (c) A similar statement by N. Efstathiou, another Morphou man, (d) Two certificate by the chairman of the village Commission of Morphou that applicant was until 14.8.74 residing at Souliou 6, Morphou (e) Letter dated 21.12.78 by the District Officer Paphos that the reason of an earlier refusal of the chairman of the village Commission of Kato Pyrghos to grant a certificate to the applicant that the applicant was a permanent resident of Morphou was that such chairman «did not know if you really before the invasion were a permanent resident of Morphou».

Held, *annulling the sub judice decision:* (1) Misconception of fact exists when the administration took the decision on the basis of non existing facts. Evaluation of facts is primarily within the domain of the administration. This Court does not review a decision on the merits of the evaluation of facts. There does not exist a misconception of fact when the administration determines items which in substance are different and conflicting (Passage from the Conclusions of the Case Law of the Greek Council of State (1929-1959) at p. 268 cited with approval). Failure to make due inquiry causing lack of knowledge of material facts amounts to a misconception of fact.

(2) The burden lies on the applicant to satisfy or at least raise doubt in the mind of the Court that the administration acted under a misconception of fact.

(3) In cases where a doubt has arisen in this respect the Court may either order further necessary evidence or annul the act, so that the administration may ascertain the real facts without room of doubt being left.

(4) In this case the sub judice decision was issued only on the basis of the aforesaid certificate of the chairman of the village Commission of Kato

Pyrghos. The administration completely disregarded all other material in its file. It is evident that there has been no due inquiry in this case. The respondents failed to consider, evaluate or assess such other material in the file. Therefore, the Court cannot rely on the presumption of the correctness of the findings of fact by the administration. Grave doubt has been created in the mind of the Court regarding such correctness.

Sub judice decision annulled.
£100.- towards applicant's costs.

Cases referred to:

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

Christides v. The Republic (1966) 3 C.L.R. 732;

Iordanou v. The Republic (1967) 3 C.L.R. 245;

Mikellidou v. The Republic (1981) 3 C.L.R. 461;

Photos Photiades and Co. v. The Republic, 1964 C.L.R. 102;

Paphitis v. Republic (1967) 3 C.L.R. 300;

Skourides v. Attorney-General (1967) 3 C.L.R. 518;
Economou v. The Republic (1970) 3 C.L.R. 420;

Kontos v. Republic (1974) 3 C.L.R. 112;

Skapoullis and Another v. The Republic (1984) 3 C.L.R. 554.

Recourse.

Recourse against the decision of the respondents whereby applicant's application for regranting to him his refugee identity card was rejected.

C. Anastassiades, for E. Efstathiou, for the applicant.

A. Vassiliades, for the respondent.

Cur. adv. vult.

STYLIANIDES J. read the following judgment. The applicant by this recourse seeks declaration that the decision of the respondents communicated to him by letter dated 29/3/79, whereby his application for regranting to him his refugee identity card was rejected, is null and void and of no effect whatsoever.

The applicant was born at Pighenia village where he found a family. He has six children. He resided at his native village until 1969 or 1970 when he changed his place of residence. He is a builder by occupation.

After the Turkish invasion of 1974 he moved with his family to Panayia village in the Paphos district. Due to the plight that befell on this country by the Turkish invasion and the disruption of the economy he, as many thousands of Cypriots, was unemployed. He travelled to Boulgaria where he worked from January to September 1975. In the meantime his family moved from Panayia to Polis Chrysochou. In January 1976 he was employed in Tsechoslovakia; he returned finally from that country in December 1976. From October 1977 until June 1978 he was employed at Saoudi Arabia.

In virtue of the decision of the Council of Ministers 13503 of 19/9/74 a refugee identity card was issued to the applicant, who stated that his place of abode at and before the Turkish invasion was Morphou town.

During his absence abroad the respondents informed his wife that the refugee identity car No. 47427 issued to the applicant was cancelled because he was not at the material time resident at Morphou. Thereupon the applicant submitted application requesting the regranting to him of his refugee identity card, the holding of which obviously entailed material benefit and certain positive legal results. Certificates - statements by a number of persons were submitted to the respondents in support of his said application.

In the file of the administration produced before this Court there was nothing indicating that he was resident of Pighenia with the exception that his name was in the list of voters for the 1973 elections, apparently the Presidential elections.

The respondents rejected the request of the applicant on the ground that his usual residence before the Turkish invasion was Pighenia village and not Morphou. The applicant was informed accordingly by letter dated 8/10/77.

The applicant renewed his request and his application was reconsidered by the respondents. The respondents obtained an undated statement of the Chairman of the village Commission of Pighenia to the effect that the applicant left Pighenia in 1970 and was residing at Kato Pyrghos and a statement from the Chairman of the village Commission of Kato Pyrghos to the effect that before the Turkish invasion the applicant had his usual residence at Kato Pyrghos. The latter statement is dated 8/3/79.

On 28/3/79 the sub judice decision was taken whereby the application for regranting to him of the refugee identity card was rejected as it was considered that he had his usual residence before the Turkish invasion at Kato Pyrghos and not Morphou. Hence this recourse.

The respondents raised preliminary objection that the decision challenged by this recourse is confirmatory of the decision communicated to the applicant on 8/10/77 and therefore is not amenable to the jurisdiction of this Court under Article 146 of the Constitution and further that the recourse is out of time. In an Interim Decision the Court decided that the sub judice decision is not comfirmatory of the decision of 8/10/77, as new inquiry was carried out and there is no identity of reasoning between the first and the second decision. The prayer is justiciable and the recourse is not out of time.

The applicant by this recourse complains that the sub judice decision was based on a misconception of fact and or on facts which were neither true nor correct, that it lacks reasoning, it is a product of excess and or abuse of power and is contrary to law.

Misconception of fact exists when the administrative decision is taken on the basis of non existing facts. It has been decided in a number of cases that administrative acts or decisions done or taken on a misconception of law or fact may be treated as instances of excess or abuse of power.

Evaluation of the facts is primarily within the domain of the administration and in our system of Revisional Jurisdiction the Court does not review a decision on the merits of the evaluation of fact. On the question of misconception of fact in the Conclusions of the Case Law of the Greek Council of State (1929-1959), we read at p. 268:-

«Δια την ύπαρξιν πλάνης περί τα πράγματα απαιτείται αντικειμενική ανυπαρξία των εφ' ων η πράξις ερείδεται πραγματικών περιστατικών και προϋποθέσεων: 2134(52), διαπιστουμένη άνευ του στοιχείου της υποκειμενικής κρίσεως: 1089(46). Δεν υφίσταται πλάνη περί τα πράγματα οσάκις η Διοίκησις εκτιμά κατ' ουσίαν διάφορα, και αντιφατικά στοιχεία ων η στάθμισις δύναται κατ' αρχήν να οδηγή και εις το συμπέρασμα εις ο ήχθη η Διοίκησις. Τοιαύτη εκτίμησις δεν ελέγχεται κατ'ουσίαν εν τη ακυρωτική δίκη (θλ. και 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, also *The Republic v. Lefkos Georghiades*, (1972) 3 C.L.R., p. 594.

Failure to make a due inquiry causing lack of knowledge of material facts amounts to misconception of fact (*Christides v. The Republic* (1966) 3 C.L.R. 732; *Iordanou v. The Republic* (1967) 3 C.L.R. 245; *Mikellidou v. The Republic* (1981) 3 C.L.R. 461).

The burden lies on the applicant to satisfy the Court that the respondent has acted under a misconception of fact or at least to raise a doubt in the mind of the Court in this respect. In *Republic v. Georghiades* (supra) at p. 646 it was said:-

«There is no doubt, therefore that our Supreme Court, in exercising its competence under Article 146 of the Constitution, has to examine whether a certain administrative act can be annulled as contravening the provisions of the law. The mistaken valuation of the real facts and the mistaken subjection or non-subjection of those facts to the said legal provisions, constitutes contravention of the law for the purposes of Article 146.

In case 368 of 1937, the Greek Council of State, dealing with the question of misconception of the real facts, took the view that misconception of the facts by the administration is an indirect contravention of the law, and provides a reason for the annulment of such decision of the administration».

In cases where such doubt having arisen, it appears probably that the administrative act concerned has been based on a misconception of the true facts situation, the Administrative Court has two courses open to it in order to clear a doubt that has arisen: either to order further necessary evidence or to annul the act concerned so that the administration may ascertain the real facts

without room for doubt being left. (See «The Law of Administrative Acts» by Stasinopoulos (1951) p. 305; *Photos Photiades and Co., v. The Republic of Cyprus through the Minister of Finance,* 1964 C.L.R. 102; *Theodotos Paphitis v. The Republic* (1967) 3 C.L.R. 300; *Pantelis Skourides v. The Attorney-General of The Repulbic* (1967) 3 C.L.R. 518; *Economou v. The Republic* (1970) 3 C.L.R. 420; *Dinos Kontos v. Republic* (1974) 3 C.L.R. 112; *Skapoullis and Another v. The Republic* (1984) 3 C.L.R. 554.)

In the present case the respondents issued the sub judice decision only on the basis of the certificate issued by the Chairman of the village Commission of Kato Pyrghos. In the file of the administration, however, there is a certificate issued by Elias M. Eliades, Court Bailiff posted at the Morphou Court until the invasion, who as from 1974 is posted at the District Court of Paphos. His wife, Koulla, is posted at the office of the District Officer at Paphos. The certificate issued by the civil servant is to the effect that the applicant was residing until 14/8/74 at Souliou 6 at Morphou. Eliades was residing at Souliou 17. They were neighbours and they were frequently meeting at the coffee-shop of Morphou. In the same file of the administration there is a note dated 16/2/79 that Avraam Hadjicharalambous who was residing at the material time at Souliou 1, Morphou, certified that the applicant was living with his family at Morphou. Nicos Efstathiou, another Morphou man made a similar statement. The chairman of the village Commission of Morphou issued two certificates, one 20/11/76 certifying that the applicant was residing until 14/8/74 at Souliou 6 at Morphou when he fled due to the Turkish invasion. In 1977 the same Chairman issued another certificate stating that on the information of two reliable persons, namely Andreas Charalambous of Morphou holder of identity card 24923 and Elias Pelava of Morphou holder of identity card 250310, the applicant until the invasion was permanent inhabitant of Morphou.

The administration completely disregarded all the above coming from persons residing at Morphou at the material time and used only the certificate they obtained from the Chairman of the village Commission of Kato Pyrghos on 8th March 1979. It is noteworthy that the applicant in 1978 applied to this Chairman for a certificate concerning his refugee identify card, but this Chairman refused to issue any. The applicant complained to the District Officer who by letter dated 21/12/78 (Exhibit Γ) informed the applicant that his complaint was investigated and it was found that

«the reasons of the refusal of the Chairman of the village Commission to issue the requested certificate is that he did not know if you really before the invasion were permanent resident of Morphou.» He did not state to his superior, the District Officer, in December 1978, which is a date approximate to the 8/3/79, that the applicant was before the invasion resident of Kato Pyrghos. This plea of ignorance is not compatible with his certificate on a cyclo style form of the respondents No. 2 to the effect that the applicant was resident of Kato Pyrghos.

From all the above it is evident that the respondents failed to carry out a due inquiry. The respondents failed to consider or evaluate the host of the certificates and statements in their file. They failed to make any assessment of the material before them. They did not perform their primary duty. The Court cannot rely on the presumption in favour of the correctness of the findings of fact by the administration. Grave doubt has been created in the mind of the Court about the correctness of the finding of fact on which the sub judice decision was based. Thus sub judice decision is tainted and faulty.

Having considered the matter I decided to annul the sub judice decision allowing thus the respondents to carry out the reasonably necessary inquiry for the ascertainment directly of the relevant facts.

For the foregoing reasons I declare the sub judice decision to be null and void and of no effect whatsoever under Article 146.4(b).

Under the circumstances of the case, respondents to pay £100.- towards applicant's costs.

Sub judice decision annulled. Respondents to pay £100.- costs.