

1986 May 29

[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 NICOLA KAIZER,

Applicant,

v.

THE COMMITTEE FOR THE APPOINTMENT
OF ADMINISTRATOR OF THE ESTATE OF
A MISSING PERSON,

Respondent.

(Case No. 318/83).

5 *The Missing Persons (Temporary Provisions) Law 72/79—*
Sections 4, 5(2), 5(5), 5(8) and 7—The Civil Wrongs Law,
Cap. 148—Section 39—The Administration of Estates Law,
Cap. 189—Section 30—Missing person—Wife of missing
10 *person receiving his salaries for the period 1.4.78 till and*
including August 1980—Wife and applicant appointed
under s. 4 of Law 72/79 on 23.7.80 co-administrators of
the estate of the missing person—Practice by Government
to pay salaries by cheques—Such cheques could not be
15 *cashd unless they were either issued in the wife's name or*
there was an authorisation by the Government—In the cir-
cumstances there has been no violation of section 39 of
Cap. 148 or of section 30 of Cap. 189—Any irregularity
as regards the period after the appointment of the admi-
nistrators remedied by the subsequent and with retros-
pective effect approval by the Committee for Missing Per-
sons of the manner in which the income of the missing
person had been disposed—Sub judice decision not to ask
the wife to refund the salaries she received as aforesaid or

any part thereof, reasonably open to the respondent Committee.

Civil Wrongs—The Civil Wrongs Law, Cap. 148—Section 39.

Administration of Estates—The Administration of Estates Law, Cap. 189—Section 30.

Time within which to file a recourse—Constitution, Article 146.3

--Decision taken on 6.4.83 and communicated by letter

dated 9.4.83 of the Committee of Missing Persons that it

had no competence to deal with the salaries of the missing

person received by his wife during the period 1.4.78 till

18.10.79 as during that period the Committee had not been

established under the law—Such decision is of an exe-

cutory nature—Recourse filed on 28.7.83—Recourse as

regards the relief relating to the salaries for the period

1.4.78 till 18.10.79 out of time.

On the 23.7.80 applicant and Froso Kaizer, the wife of the missing person Christos Kaizer, were appointed under s. 4 of the Missing Persons (Temporary Provisions) Law 72/79 as administrators of the estate of the said missing person.

On the 12.7.82 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 for an increase of the sum of £120, which the Committee had by a decision dated 23.7.80 approved as monthly payment to her out of the missing person's salary.

The applicant objected and alleged, inter alia, that Froso Kaizer from April 1978 to August 1980 was receiving the whole of the salary of the missing person.

On the 25.2.83 the respondent Committee decided to increase the monthly allowance of Froso Kaizer as from 1.8.82. from £120 to the one half of the net salary of the missing person. As regards, however, her claim to receive retrospectively the salaries of her missing husband the respondent Committee asked to be informed, if applicant's allegations as regards the salaries for the period April, 1978 to August 1980 were true.

5 On the 10.3.83 Froso Kaizer told the Committee that the salaries of the period July, 1974 to 1.3.78, amounting to £6,061.440 mils were deposited in his account with STELMEK, a Secondary School-Teachers Cooperative Society. She further stated that the salaries for the period 1.4.78 till 31.5.80 amounting to £5,594.665 mils were used by her and that she also used the salaries for the months of June and August 1980, amounting to £833.260 mils.

10 On the 6.4.83 the Committee decided *inter alia* that as regards the amounts which the wife of the missing person withheld the Committee had no competence as far as the period 1.4.78 till 18.10.79 is concerned to take any decision because during that period the Committee had not
15 been established under the relevant law and that as regards the period 19.10.79 till 31.8.80, the Committee will examine the matter of refund of the whole or part of the salaries for the period after inviting Froso Kaizer to express her views.

20 The above decision was communicated to applicant's advocate by letter dated 9.4.83. By letter dated 6.7.83 the Committee informed the applicant that having taken into consideration the representations of Froso Kaizer and the fact that the whole amount of the salaries of the
25 missing person for the period 1.7.74 to 31.3.78 was lodged in his account, decided not to ask Mrs. Kaizer to refund any amount.

On the 28.7.83 the applicant filed the present recourse*.

30 *Held*, dismissing the recourse: (1) As regards the part of the relief, which relates to the disposal of the income of the missing person between 1.4.78 and 18.10.79 the recourse is out of time, because the respondent Committee finally decided the matter by its decision of the
35 6.4.83, communicated to the applicant and his counsel by letter dated 9.4.83. Any reference to that decision in

* It should be noted that the facts of the present case are closely connected with the facts in *Kaizer v The Committee of Missing Persons* (1985) 3 C L R 2668.

the decision communicated by the letter of the 9.7.83 is of a confirmatory nature.

(2) In relation to section 5(8) of Law 77/79* it cannot be overlooked that Froso Kaizer and the applicant were appointed as administrators of the estate of the missing person on the 23.7.80 and that the salaries of the missing person up to that time must have been in effect paid directly to his wife. It has to be pointed out that upon assuming the administration the two administrators had a duty under s. 5(2) of the said law to prepare an inventory of the estate. The approval given by the sub judice decision must be the one provided by s. 5(5)** of the said law.

Reference should, also, be made to the fact that the salary of the missing person, as the practice has been for years, was paid by cheque, which could not be cashed by Mrs. Kaizer, unless the cheque was either issued in her name or there was an authorisation to that effect by the Government. This was the position with other dependents of missing persons in general.

In the light of the above it cannot be said that Froso Kaizer committed the Civil Wrong of conversion (Section 39 of the Civil Wrongs Law, Cap. 148) or that she violated Section 30 of the Administration of Estates Law, Cap. 189, as the payments were made to the missing person's dependent, namely his wife, by the Government for her own use.

Any irregularity as regards July and August 1980 was remedied by the subsequent and with retrospective effect approval of the manner in which the salaries were disposed. There is no doubt that under section 7 of the Law the Committee has a wide discretion.

(3) There has been neither a misconception of fact nor is the sub judice decision contrary to Law, including the

* Quoted at p. 1153 post.

** Quoted at pp. 1153-1154 post.

general principles of administrative law. The sub judice decision was reasonably open to the Committee.

Recourse dismissed.
No order as to costs.

5 Cases referred to:

Kaizer v. Committee of Missing Persons (1985) 3 C.L.R. 2668.

Recourse.

10 Recourse against the decision of the respondent whereby it decided that it could not and did not consider it proper and just to ask the co-administrator of the applicant Froso Kaizer to refund the whole or part of the amount which she withheld during the period 1.4.78-31.8.80 from the salaries of the missing person Christos N. Kaizer.

15 *L. Papaphilippou*, for the applicant.

Cl. Theodoulou, Senior Counsel of the Republic, for the respondent.

A. S. Angelides, for the interested party.

Cur. adv. vult.

20 A. LOIZOU J. read the following judgment. By the present recourse the applicant seeks: "A declaration of the Court that the act or decision of the respondent Committee, dated 6th July, 1983, by which it decided that it could not and did not consider it proper or just to ask at
25 the present stage the co-administratrix of the applicant Froso Kaizer to refund the whole or part of the amount which she withheld during the period 1st April 1978 - 31st August 1980 from the salaries of the missing Christos Nicolas Kaizer, is void and without any legal effect and everything
30 omitted ought to have been done."

The recourse was connected with recourse No. 191/83 in which judgment was delivered on the 12th November 1985, reported as *Georghios Kaizer etc. v. The Committee of Missing Persons* (1985) 3 C.L.R. 2668. Indeed reference

is made both in the opposition and the written addresses filed by counsel to the facts and circumstances set out in the aforesaid recourse, but there was never any direction that they be tried together. On the contrary separate directions in the two recourses were given for the filing of the written addresses on behalf of the parties, though they were fixed always on the same dates. Inevitably, therefore, I shall refer to the material produced in the other case for the purpose of giving the factual background of the case. 5

For the sake of consistency I intend to quote hereinafter the facts as found by me in the aforesaid recourse: 10

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. 15

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 on him and that the rest of the salary be paid to the wife of the missing person Mrs. 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. 20 25 30

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. 35

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.

5 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
10 applicant to his office and placed before him the applica-
tion of the wife. He stated that he objected to any in-
crease 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
15 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 re-
ceive £120 per month, yet from the 1st June 1980,
to August 1980, she appropriated the whole of his salary
20 and said that in case her claim was satisfied he would
make a recourse to the Court and in fact ask for the re-
duction of the amount of £120.

On the 25th February 1983, the respondent Com-
25 mittee 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, and that that
amount was income and not capital of the missing person
30 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 in-
stalments a flat in order to solve her housing problem,
the Committee decided to increase as from 1st August
35 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
40 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.

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. 5

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 STEL-MEK 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, July, and August 1980, amounting £833.260 mils. 10 15

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. 20 25

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:- 30

(1) That there was no serious reason to vary its decision of the 25th February 1983. (2) As regards the 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 pe- 35

riod 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.

10 The aforesaid decision was communicated to Mr. Papaphilippou on the 9th April 1983 and copies to the two administrators.

After the aforesaid decision was communicated to the applicant and the co-administratrix, the respondent Committee wrote to the applicant on the 6th July, 1983, the following letter which is appended also to the application and which contains their decision challenged by the present recourse which reads:

20 "I refer to the subject of the disposal of the salaries of the missing person Christos N. Kaizer by his wife for the period of 1st April 1978 - 31st August 1980, and I inform you that the Committee, having taken into consideration the representations of Mrs. Kaizer and in particular the fact that for the period 25 1st July 1973 - 31st March, 1978 the whole amount of the emolument of the missing person which amounted to the sum of £6,061.440 mils was lodged in the account of the missing person (whereas in many other instances the amounts of the emoluments of missing persons for that period had been used by their wives), 30 decided that it cannot accept the submission put forward by the Law Office of Mr. Papaphilippou on behalf of his client co-administrator of the property of the missing G. Kaizer and does not consider it proper 35 and just to ask at this stage Mrs. Kaizer to refund the whole or part of the sum which she kept during that period."

As regards the part of the relief sought by the present recourse which refers to the disposal of the income of the 40 missing person between the 1st April 1978 - 18th October

1979, the respondent Committee finally decided on the matter by its decision of the 6th April, 1983, communicated to counsel for the applicant as well as to himself and his co-administratrix same, and which communication was contained in their letter of the 9th April 1983, under paragraph 2 (a) in which it was stated: "For the period 1st April 1978 - 18th October 1979 inclusive the Committee has no competence to take any decision whatever as they refer to a period before its establishment under the relevant Law." 5

Therefore a recourse challenging that part of the decision is out of time as the present recourse was filed on the 28th July 1983, that is well over three months from the communication of the relevant decision which for all intents and purposes was an executory one. If anything that decision ought to have been challenged either by means of recourse 191/83 or by separate recourse filed within seventy-five days from its communication. Any reference therefore in the decision of the 6th July 1983, and the communication thereof of the 9th July, 1983, is of a confirmatory nature and therefore not capable of being the subject of a recourse under Article 146 para. 1 of the Constitution. 10 15 20

What the respondent Committee undertook to examine further after—as it said it would do—inviting the co-administratrix Froso Kaizer to express her views on the representations made on behalf of the applicant through his counsel by their letter of the 28th March, 1983, was as regards the emolument of the missing person for the period between 19th October, 1979 and 31st August, 1980, in respect of which a new decision was reached and which could, having been communicated to the applicant by their letter of the 6th July 1983, be validly challenged by the present recourse which was filed within the period of seventy-five days prescribed by Article 146 para. 3 of the Constitution. 25 30

It is the case for the applicant that the respondent Committee by its sub judice decision suffered and/or approved the unlawful appropriation by the co-administratrix of the property of the missing person and that by such appropriation the administratrix offended section 5(8) of the Missing Persons (Temporary Provisions) Law 1979 (Law No. 77 of 1979) hereinafter to be referred to as 35 40

the Law, in as much as Froso Kaizer did not secure the approval of the respondent Committee as provided by the said subsection which reads as follows:

5 «(8) Κινητή ή ακίνητος περιουσία δεν δύναται να πω-
ληθή, δωρηθή, υποθηκευθή, ενεχυριασθή ή καθ' οιον-
δήποτε τρόπον μεταβιβάσθῃ ή επιβαρυνθῃ ειμή υπ' ους
όρους ήθελεν εγκρίνει η Επιτροπή.»

In English it reads:

10 “(8) Movable or immovable property cannot be
sold donated, mortgaged or in any way transferred or
charged except on such terms as the Committee may
approve.”

15 In relation to the aforesaid provision it could not be over-
look that 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 provi-
sions of Section 4 of the Law, as administrators of the
estate of the said missing person and that the salary of
20 such missing person during the period up to that time
must have been in effect paid direct to the wife before their
appointment, with the exception possibly of that of the
month of August.

25 Before proceeding any further, however, it has to be
pointed out that upon assuming the administration of the
estate of the missing person the two administrators had
under section 5, subsection 2 of the Law to prepare an in-
ventory of the property of the missing person. I take it
that such an inventory was prepared and furthermore that
the approval given by the sub judge decision must be the
30 one provided for by section 5 subsection 5 of the Law
which provides:

35 «(5) Εκ της κινητής περιουσίας του αγνοουμένου οι
διαχειρισται καταβάλλουσιν εις τους εξαρτωμένους του
αγνοουμένου τοιούτο ποσόν και κατά τοιούτον τρόπον
ως θα έκρινε η Επιτροπή.»

Δια τους σκοπούς του παρόντος εδαφίου 'εξαρτώμενοι' σημαίνει σύζυγον (περιλαμβανομένης μηστής ήτις απέκτησε τέκνον εκ του αγνοουμένου), τέκνα και τους γονείς, εάν ούτοι ήσαν ή θα καθίσταντο, λαμβανομένων υπ' όψιν των επικρατουσών συνθηκών, πλήρως ή κυρίως εξαρτώμενοι εκ του αγνοουμένου.» 5

And in English:

"(5) Out of the movable property of the missing person the administrators pay to the dependents of the missing person such amount and in such a manner as the Committee may approve. 10

For the purposes of this subsection 'dependents' means, wife (including fiancé which had a child with the missing person), children and the parents, if they were or they would become, taking into consideration the prevailing conditions, fully or mainly dependent on the missing person." 15

In this respect, however, reference has to be made to the fact that the salaries of the missing person, an Educationalist in the Government Service were, as the practice has been for years now, paid by cheque which could not be cashed by the administratrix unless it was either issued in her name or there was an authorization to that effect by the Government. This was the position with other dependents of missing persons in general who were also receiving their salaries until the enactment of the Law as it was generally accepted as a matter of government policy that these salaries were paid not only as a recognition of their being alive and entitled to them, though prevented from rendering services by reason of their predicament, but also for the sake of maintenance and survival of their families and their dependents in general. But even if salaries were not paid by cheque which the dependents could lawfully cash and there was instead a cash payment again the signature of the dependent would be essential for such payment to be made. 20 25 30 35

Once that was the position it cannot be said that the administratrix committed the Civil Wrong of conversion

as claimed by the applicant, and that she acted contrary to Section 39 of the Civil Wrongs Law, Cap. 148, or that she violated Section 30 of the Administration of Estates Law, Cap. 189 as the payments were made by government to the dependant, in this case the wife, for her own use until the matter was ultimately regulated with the enactment of the Law. In any event even if I were to consider that there was some irregularity for at least the months of July and August, 1980. which months refer to a part of the period in dispute that ran after the appointment of the administratrix under the Law I would still hold that the whole situation was remedied by the subsequent and with retrospective effect approval of the manner in which these salaries were disposed of by Mrs. Froso Kaizer, the wife of the missing person.

There is no doubt that the respondent Committee is given a wide discretion under Section 7 of the Law. which has been invoked by the applicant to base alternatively his claim. and which provides that "for every matter arising during the administration and not specially provided for by the present Law the Committee decides".

I need not repeat here what I said in my judgment in the connected case of *Georghios Kaizer etc., v. The Committee of Missing Persons (supra)* which I fully endorse. I need only say in conclusion that having considered the facts and circumstances of the 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 matter was duly considered by the respondent Committee after hearing all concerned and the sub judice decision was reasonably open to them.

A great number of preliminary objections were raised in this recourse but in view of the conclusion to which I have come, on the merits I do not intend to examine each and everyone of them as I would be turning this judgment into an academic exercise. Suffice it to say that I proceeded on the assumption that the functions of the respondent Committee prescribed by the Law fall within the domain of

Public Law and I do not consider it essential to examine that aspect of the case.

For all the above reasons this recourse is dismissed but in the circumstances there will be no order as to costs.

Recourse dismissed.

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No order as to costs.