IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

CONSTANTINOS IOANNIDES,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
1. THE COUNCIL OF MINISTERS,
2. THE MINISTRY OF INTERIOR,
3. THE MIGRATION OFFICER,

Respondents.

(Cases Nos. 344/70, 377/70).

Prohibited Immigrants—Deportation orders—Decision of the Council of Ministers declaring applicant a prohibited immigrant under the relevant statute viz. *the Aliens and Immigration Law, Cap. 105—Decision based on two material assumptions* viz. *that the applicant was not a Cypriot citizen and that the Cyprus passport issued to him in 1964 had been issued erroneously—Such assumptions could not have been safely relied on as they were the product of incorrect and incomplete knowledge of the relevant factual position—Therefore the aforesaid* sub judice *decision held to have been reached in the course of a defective exercise of the discretionary powers of the respondent Council of Ministers—Such defects being misconceptions as to, and failure to make a due inquiry regarding, material facts—Moreover, due to these defects the reasoning supporting the said decision of the Council has been rendered incorrect—Consequently the said decision has to be annulled as being contrary to law* viz. *contrary to the general principles of administrative law and in abuse and excess of powers—See further immediately herebelow.*

*Subsequent orders by respondent 2 deporting the applicant from Cyprus and of respondent 3 cancelling his Cyprus passport have also to be annulled—Because the first decision (*i.e. *the aforesaid decision of the Council of Ministers (respondent 1) declaring applicant a prohibited immigrant* (supra)*) was a basic prerequisite and cause for the making of the said two subsequent orders—And because the said first decision and the said two subsequent orders are inseparably connected both factually and legally.*

Administrative acts or decisions—"Contrary to law" in the sense of Article 146.1 of the Constitution—Acts or decisions contrary to the well settled principles of Administrative Law are within the ambit of that paragraph—Notion of "law" in that paragraph construed to include those well settled principles.

Administrative acts or decisions—Reasoning thereof—Due reasoning required—Defective reasoning in the instant case.

Misconception of the factual position—Meaning and effect—It constitutes a contravention of the well settled principles of administrative law and the resulting act or decision has to be annulled as being "contrary to law" and in excess and abuse of powers.

Inquiry—Due inquiry into all material facts and circumstances required—Insufficient inquiry—Failure to make due inquiry is a ground for the annulment of the resulting acts or decisions.

Discretionary powers vested in the administration—Defective exercise—Misconception of the factual position—Insufficient inquiry—Insufficient reasoning—Such defects vitiate the validity of the administrative acts or decisions concerned.

This is a recourse against: (a) the decision of the Council of Ministers (respondent 1) whereby the applicant was declared a "prohibited immigrant" under the Aliens and

Immigration Law, Cap. 105, section 6(1)(f)(g), (b) the order made by respondent 2 directing the applicant's deportation from Cyprus, and (c) the order of respondent 3 cancelling the applicant's Cyprus passport.

The facts of this case sufficiently appear in the Interim Decision of the Court dated July 9, 1971 (see (1971) 3 C.L.R. 251) and in the judgment of the Court which follows; this Interim Decision is to be treated as forming part of the judgment and is to be read together with it.

Annulling the aforesaid decision and orders, the learned President of the Court :-

Held, (1) The decision of the Council of Ministers declaring the applicant a "prohibited immigrant" was based on two assumptions *viz.* that the applicant was not a Cypriot citizen and that the Cypriot passport issued to him in 1964 had been erroneously issued. But these two assumptions were not premises which could be safely relied on as they were the products of incorrect and incomplete knowledge of the relevant factual position:

(2) Consequently the aforesaid decision of respondent 1 (*viz.* the Council of Ministers) is a decision reached in the course of a defective exercise of the discretionary powers vested in the Council; the defects being misconception as to, and failure to make a due inquiry regarding, material facts. Also due to these defects the reasoning supporting the decision in question has been rendered incorrect. In the result the said decision has to be annulled for the above reasons.

(3) For the same reasons the order of the Minister of Interior (respondent 2) that the applicant should be deported from Cyprus has to be annulled too. It is, indeed, abundantly clear that the aforesaid decision of the Council of Ministers (respondent 1) was a basic prerequisite and cause for the making of the said deportation order by the Minister; the decision of the Council and the

subsequent order of the Minister are inseparably connected, both factually and legally.

(4) Exactly the same apply to the cancellation by the Migration Officer (respondent 3), on the same date as the aforesaid decision of the Council and the deportation order made by the Minister, of the Cypriot passport of the applicant; such cancellation was not an independent step taken by the Migration Officer but it is obviously an act inseparably related to the said decision of the Council of Ministers; and both are based on essentially the same reasoning.

(5) A misconception as to a material fact or the failure to make a due inquiry causing lack of knowledge of material facts invalidates the relevant administrative action due to a contravention of well settled principles of Administrative Law; and the notion of "law" in the phrase "contrary to law" in paragraph 1 of Article 146 of the Constitution is to be construed—in view of the nature of the remedy by recourse for annulment provided thereby —as including the well settled principles of Administrative Law (see, *inter alia, Morsis* v. *The Republic* (1965) 3 C.L.R. 1).

Sub judice decision and orders annulled.

Cases referred to :

Demetriou Ice and Cold Stores Co. Ltd. v. *The Republic* (1965) 3 C.L.R. 361;

Nicolaides v. *The Greek Registrar of the Co-operative Societies* (1965) 3 C.L.R. 585;

National Bank of Greece S.A. v. *The Republic* (1970) 3 C.L.R. 430;

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

Roditis v. *Karageorghi* (1965) 3 C.L.R. 230;

HjiLouca v *The Republic* (1966) 3 C L R 854,

Iordanou v *The Republic* (1967) 3 C L R 245,

The Republic v *Gava* (1968) 3 C L R 322,

Philippos Demetriou and Sons Ltd v *The Republic* (1968) 3 C L.R 444,

Christides v *The Republic* (1966) 3 C L R 732,

Papaleontiou v *The Republic* (1970) 3 C L R 54,

Moisis v *The Republic* (1965) 3 C L R 1

Decisions of the Greek Council of State Nos 564/1932 52/1965, 973/1965

Recourse

Recourse against the decision of the respondents whereby applicant was declared as a prohibited immigrant against the decision deporting him from Cyprus as a prohibited immigrant and against the cancellation of his Cypriot passport

Fr Markides with *L Papaphilippou, L Markidou (Mrs)* and *C Velaris* for the applicant

A Frangos Senior Counsel of the Republic for the respondents

Cur adv vult

The following judgment was delivered by

TRIANTAFYLLIDES, P Before delivering judgment in these two cases I gave an Interim Decision on the 9th July 1971 (see (1971) 3 C L R 251) such Decision is to be treated as forming part of this judgment and is to be read together with it

The applicant by recourse 344/70 complains, in effect, against a decision of the Council of Ministers which was reached on the 6th November 1970 (*exhibit 1*) and

by means of which the applicant was declared to be a prohibited immigrant, under paragraphs (f) and (g) of sub-section (1) of section 6 of the Aliens and Immigration Law (Cap. 105); and by the same recourse he complains, also, against an order for his deportation from Cyprus as a prohibited immigrant (*exhibit 2*), which was issued by the Minister of Interior, as Chief Immigration Officer, on the 6th November, 1970, under section 14 of Cap. 105.

By recourse 377/70 the applicant complains, once again, against the said decision of the Council of Ministers and, also, against the cancellation of his Cypriot passport No. 70064 (*exhibit 4*), which was issued to him on the 21st February, 1964; such cancellation was communicated to the applicant by a letter of the Migration Officer dated the 6th November, 1970 (*exhibit 3*).

Both recourses were heard together as they were made in respect of matters related to each other.

The aforesaid Interim Decision was given after hearing arguments concerning the matter of the citizenship of the applicant.

By such Decision I held that the applicant did not become a Cypriot citizen either by virtue of the provisions of section 4(1) of Annex D to the Treaty of Establishment of the Republic of Cyprus (which came into force on the 16th August, 1960), or by virtue of the provisions of section 3 of the Republic of Cyprus Citizenship Law, 1967 (Law 43/67); I decided on these two matters on the basis of legal considerations.

While dealing, next, in that Decision, with the issue of whether the applicant became a Cypriot citizen under section 2(1) of Annex D. I had, in view of the nature of such issue, to go at length into the factual aspect of the matter and, in the process of doing so, I formed the view that two assumptions on which the Council of Ministers had based its *sub judice* action—*viz.* that the applicant was not a Cypriot citizen and that the Cypriot passport issued to him in 1964 had been issued erroneously—were not premises which could be safely relied on as the factual position which the Council of

Ministers had before it at the time was incorrect and incomplete in certain material respects. Having considered the situation I decided that I ought not to proceed to pronounce, at that stage, on the claim of the applicant to Cypriot citizenship under section 2(1) of Annex D, because my doing so would involve reaching conclusions of fact which should in the first instance be reached by the Government; I said in this respect :-

> "At this stage I cannot forestall the action to be taken by Government in this connection; as pointed out in the case of *Pikis* v. *The Republic* (1965) 3 C.L.R. 131, at p. 149: 'After all it must not be lost sight of that it is for the Government to govern and for the Court only to control, to the extent necessary, and it is not up to the Court to determine in the first instance matters of administration before Government has itself dealt with such matters on the merits'. To do otherwise would be to act, in this respect, beyond my powers under Article 146 of the Constitution."

The hearing of the applicant's two recourses was then resumed and I proceeded to hear counsel on whether or not I should, in the light of the conclusions set out in my Interim Decision, annul the administrative action complained of by the applicant.

Having examined all relevant aspects I am of the following opinion :-

The decision of the Council of Ministers declaring the applicant to be a prohibited immigrant, which, as already stated, has been based on two material assumptions which could not have been safely relied on—as they were the products of incorrect and incomplete knowledge of the relevant factual position—is a decision reached in the course of a defective exercise of the discretionary powers of the Council of Ministers; the defects being misconceptions as to, and failure to make a due inquiry regarding, material facts. Also, due to these defects the reasoning supporting the decision of the Council has been rendered incorrect.

A misconception as to a material fact (see, *inter alia*,

Demetriou Ice and Cold Stores Co. Ltd. v. *The Republic* (1965) 3 C.L.R. 361, *Nicolaides* v. *The Greek Registrar of the Co-operative Societies* (1965) 3 C.L.R. 585, *National Bank of Greece S.A.* v. *The Republic* (1970) 3 C.L.R. 430, The Conclusions from Case-Law of the Council of State in Greece (Πορίσματα Νομολογίας τοῦ Συμβουλίου τῆς Ἐπικρατείας) 1929—1959 p. 267, and the decisions of the Greek Council of State in cases 52/1965 and 973/1965) or a failure to make a due inquiry causing lack of knowledge of material facts (see, *inter alia, Photos Photiades & Co.* v. *The Republic*, 1964 C.L.R. 102, *Roditis* v. *Karageorghi* (1965) 3 C.L.R. 230, *Nicolaides* (*supra*), *HjiLouca* v. *The Republic* (1966) 3 C.L.R. 854, *Iordanou* v. *The Republic* (1967) 3 C.L.R. 245, *The Republic* v. *Gava* (1968) 3 C.L.R. 322, *Philippos Demetriou & Sons Ltd.* v. *The Republic* (1968) 3 C.L.R. 444, *Christides* v. *The Republic* (1966) 3 C.L.R. 732, and "The Law of Administrative Acts" («Δίκαιον Διοικητικῶν Πράξεων») by Stasinopoulos, 1951, p. 305) results, due to contravention of well-settled principles of Administrative Law, in the invalidity of the relevant administrative action; and the notion of law (νόμος) in Article 146.1 of our Constitution is to be construed—in view of the nature of the remedy by recourse for annulment provided thereby—as including the well-settled principles of Administrative Law (see, *inter alia, Morsis* v. *The Republic* (1965) 3 C.L.R. 1 and also the cases cited above in this paragraph in all of which the validity of administrative action was examined in the light of basic principles of Administrative Law).

A misconception as to facts may consist of either the taking into account of non-existing facts or the non-taking into account of existing facts (see The Judicial Control of Discretionary Powers («Δικαστικὸς Ἔλεγχος τῆς Διακριτικῆς Ἐξουσίας») by Economou, 1965, p. 243); this is what has happened (as explained in my Interim Decision) regarding the two aforementioned material assumptions on which the *sub judice* decision of the Council of Ministers was based and, therefore, the said decision of the Council of Ministers has to be annulled. Even if I had not gone as far as to hold that the factual position on which the aforesaid assumptions were based was definitely incorrect and incomplete in

certain material respects and I had found that it only appeared to be very probable that this was so I would still annul the decision of the Council of Ministers because when an administrative judge is in doubt regarding the existence or not of factual misconception he is entitled to annul the relevant administrative action in order to enable the Administration to ascertain the correct facts in a manner leaving no room for doubt (see, *inter alia*, Stasinopoulos, *supra*, at p. 305, Economou, *supra*, at p. 250, *Photos Photiades & Co., supra, Nicolaides, supra, National Bank of Greece S.A., supra* and the decision of the Greek Council of State in Case 52/1965).

Another reason for which the decision of the Council of Ministers has to be annulled is the failure to make a due inquiry, with the result that the two material assumptions which were relied on in reaching such decision were based on a factual position which was incomplete (see, for example, *Christides, supra,* and *National Bank of Greece S.A., supra*); from all the material before me —including the absence of any relevant minutes of the Council of Ministers other than the text of its *sub judice* decision, and the fact that no written submission was made to the Council of Ministers in relation to the matter in question—it is to be derived that the Council of Ministers reached its decision in a hurry and this explains why apparently no due enquiry was made in order to ensure complete and correct knowledge of all material facts. The failure to make a due enquiry is a ground for annulment which in this case is closely related to the other already stated ground for annulment, namely misconceptions of facts, but it is also an independent, sufficient by itself, ground for annulment.

As a result of the matters giving rise to the two aforesaid grounds for annulment the reasoning of the decision of the Council of Ministers was rendered incorrect; such incorrect reasoning is yet another ground for which the said decision has to be annulled (see, *inter alia, Economou, supra,* at p. 257).

In view of the annulment of the decision of the Council of Ministers declaring the applicant to be a prohibited immigrant the subsequent order of the Minister of Interior

that the applicant should be deported from Cyprus as a prohibited immigrant has to be annulled too; irrespective of whether or not such order is to be regarded as forming together with the decision of the Council a composite administrative action (see, for example, *Papaleontiou* v. *The Republic* (1970) 3 C.L.R. 54, and the decision of the Greek Council of State in Case 564/1932) it is abundantly clear from the contents of the order (where express reference is made to the decision of the Council which preceded it on the same day) as well as from the circumstances in which the order was made that the decision of the Council was a basic prerequisite and cause for the making of the order; the decision of the Council and the order of the Minister are inseparably connected, both factually and legally.

Exactly the same apply to the cancellation, by the Migration Officer, on the same date as the decision of the Council of Ministers and the order of the Minister of Interior, of the Cypriot passport of the applicant; such cancellation was not an independent step taken by the Migration Officer but it is obviously an act inseparably related to the decision of the Council of Ministers; and both are based on essentially the same reasoning (compare the texts of the decision of the Council and of a note regarding the cancellation of the passport made by the Migration Officer in the relevant file, No. 552726 *exhibit 8*; and see, also, the evidence given by the Migration Officer in the present proceedings).

Both the applicant's recourses have, therefore, succeeded and the decision of the Council of Ministers declaring him to be a prohibited immigrant, the order for his deportation made by the Minister of Interior and the cancellation of his passport by the Migration Officer are declared to be null and void and of no effect whatsoever. Thus the situation has been re-established as it was before such administrative decision and acts. It is, of course, open to the administration to revert, if it deems it fit, to the whole matter and, after due inquiry into the relevant circumstances and ascertainment thereby of all essential elements, to re-examine any or all of its aspects (including the issue as to whether or not the applicant is a Cypriot citizen) and to reach any new

decision in relation thereto. The applicant will be, of course, entitled to challenge, if he so desires, any such new decision.

In concluding I would like to state that as the applicant has succeeded in annulling, for the reasons already stated, the whole of the administrative action challenged by him in these proceedings, I have refrained from pronouncing on whether or not he is a Cypriot citizen under section 2(1)—in conjunction with section 1(e)—of Annex D to the Treaty of Establishment, because such pronouncement would necessitate the adoption of a course no longer necessary for the purposes of these proceedings, namely the evaluation of relevant facts which is to be done in the first instance by the appropriate authorities.

I have decided to make no order as to costs because though the applicant has been the successful party nevertheless quite some time was devoted to dealing with issues which were raised by him and were decided against him (see the Interim Decision).

Sub judice decisions annulled; no order as to costs.