

1986 August 30

[ΤΡΙΑΝΤΑΦΥΛΛΙΔΗΣ. P.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

EVANGELOS PETROU,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COUNCIL OF MINISTERS,

Respondent.

(Case No. 590/84).

*Administrative Law—Misconception of fact—Ignorance of fact
—Amounts to a misconception of fact.*

5 *Administrative Law —Discretionary powers—Exercise of, by
administration without having before it all relevant ma-
terial—Defective.*

10 On 7.3.78 the Council of Ministers dismissed appli-
cants appeal against his disciplinary conviction and pu-
nishment with dismissal from the Police Force for dis-
obedience to orders. The said decision was annulled by
15 this Court on the ground of violation of the rules of na-
tural justice in that no opportunity of being heard was
afforded to the applicant by the Council of Ministers*.
Following the annulment and representations in writing
made by counsel for the applicant, the Council recon-
sidered the matter and, once again, dismissed the ap-
peal. This decision was annulled by this Court for lack
of due reasoning**. Then Counsel for the applicant made
further representations in writing, which, however, were
not placed before the Council of Ministers, when the latter

* See Petrou v The Republic (1980) 3 C.L.R. 203;

** See Petrou v The Republic (1984) 3 C.L.R. 871.

reconsidered the case and took the sub judge decision, whereby the applicant's appeal was again dismissed.

Held, annulling the sub judge decision, that as the Council of Ministers has re-examined the case without having before it all relevant material, the sub judge decision has to be annulled, as being the product of a procedurally defective exercise of its relevant discretionary powers and because ignorance of a material fact amounts, in effect, to misconception of fact. 5

Sub judge decision annulled. 10
No order as to costs.

Recourse.

Recourse against the decision of the respondent confirming the disciplinary conviction and the disciplinary punishment imposed on the applicant for the offence of disobedience to orders. 15

L. Clerides, for the applicant.

M. Florentzos, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult. 20

TRIANTAFYLLIDES P. read the following judgment. The applicant challenges by means of this recourse a decision of the Council of Ministers, taken on the 27th September 1984 and communicated to him on the 16th October 1984. 25

By virtue of such decision there was confirmed the disciplinary conviction of the applicant, and the disciplinary punishment which was imposed on him, because of conduct of his which is referred to hereinafter.

The applicant was, at the material time, an Inspector of Police and was charged with the disciplinary offence of disobedience to orders because on the 4th and 5th August 1977, while being on duty, he disobeyed an order of the Chief of Police to wear a black armband, as a 30

sign of mourning for the death of Archbishop Makarios, the late President of the Republic.

He was found guilty by a Disciplinary Committee and was, on the 1st December 1977, punished with dismissal
5 from the ranks of the Police.

His case was reviewed by the Minister of Interior who, on the 7th March 1978, confirmed the decision of the Disciplinary Committee.

The applicant, then, appealed to the Council of Ministers and his appeal was dismissed on the 17th May 1978.
10

Against the decision of the Council of Ministers the applicant filed recourse No. 272/78 which was determined on the 10th April 1980 (see *Petrou v. The Republic*, (1980) 3 C.L.R. 203). By the judgment in that case the
15 decision of the Council of Ministers was annulled on the ground that the rules of natural justice had been violated because the Council of Ministers had not afforded to the applicant an opportunity to be heard.

Then, after counsel for the applicant had made, on
20 the 20th June 1980, representations in writing to the Council of Ministers, it was decided once again by the Council of Ministers, on the 28th August 1980, to dismiss the appeal of the applicant.

This decision of the Council of Ministers was challenged
25 by the applicant by means of recourse No. 469/80 in which a judgment annulling such decision was delivered on the 9th August 1984 (see *Petrou v. The Republic*, (1984) 3 C.L.R. 871). On this occasion the decision of the Council of Ministers was annulled for lack of due
30 reasoning.

Then counsel for the applicant made further representations by means of a letter dated the 6th September 1984 and he sought, also, a meeting with the Minister of Interior for the purpose of discussing with him the case
35 of the applicant.

On the 21st September 1984 the Ministry of Interior

replied that the request for a meeting with the Minister of Interior could not be granted as the matter would be placed afresh before the Council of Ministers for reconsideration of the appeal of the applicant.

On the 27th September 1984 the Council of Ministers decided, for the third time, to dismiss the appeal of the applicant. 5

As it appears from the material before me the relevant administrative file (P (P) 305) was forwarded to the Secretary of the Council of Ministers on the 24th September 1984 with a minute from the Director-General of the Ministry of Interior which reads as follows: «Γραμματέα Υπουργικού Συμβουλίου, Παρακαλώ όπως κυκλοφορήσετε την πρόταση στα Ερ. 196-147». ("Secretary to the Council of Ministers, Please circulate the submission at Nos. 196-147"). 10 15

In the said submission to the Council of Ministers there was no reference at all to the written representation made on behalf of the applicant by means of the letter of his counsel dated the 6th September 1984; and it is quite clear that such representations were not placed at all before the Council of Ministers because the said letter is numbered 143-145 in the aforementioned administrative file and the submission to the Council of Ministers consisted only of the documents numbered 147-196 in such file. 20 25

Thus, the Council of Ministers has re-examined the case of the applicant, on the 27th September 1984, without having before it all relevant material, and, consequently, its sub judice in the present proceedings decision is the product of a procedurally defective exercise of its relevant discretionary powers and has to be annulled for this reason and also, because ignorance of a material fact amounts, in effect, to misconception of fact. 30

In view of this conclusion of mine there is no need to examine any other issue raised by counsel for the applicant in support of his claim for the annulment of the sub judice decision of the Council of Ministers. 35

In the result the present recourse succeeds and the said decision is annulled; but I will not make any order as to the costs of this case.

S

*Sub judice decision annulled.
No order as to costs.*