

[TRIANTAFYLLIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE  
CONSTITUTION

MICHAEL KONTOYIANNIS,

*Applicant,*

*and*

1. THE GREEK COMMUNAL CHAMBER AND/OR
2. THE REPUBLIC, THROUGH THE ATTORNEY-GENERAL AS SUCCESSOR TO THE GREEK COMMUNAL CHAMBER,

*Respondents.*

(Case No. 169/63).

1964  
Nov. 7,  
Dec. 12  
1965  
Jan. 21,  
Nov. 12,  
26, 27, 30,  
April 14,  
June 1,  
12, 15, 26,  
Oct. 5, 6, 12,  
Nov. 8, 10  
1966  
April 23.

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*Administrative Law—Recourse under Article 146 of the Constitution—Effect on the recourse of applicant's death—Principles laid down in Chrysostomides and the Greek Communal Chamber 1964 C.L.R. 397, followed and applied—Applicant's heirs or dependants not possessing a legitimate interest of their own in the subject matter of the proceedings—Right to damages vesting in the estate as a result of a successful outcome of the recourse—Does not suffice to vest in the heirs the legitimate interest of their own, required for the purpose of the proceedings being continued in spite of the applicant's death—Therefore, the recourse has been abated because of the applicant's death.*

*See also under Elementary Education herebelow.*

*Elementary Education—School teacher—Age of retirement—Recourse against premature retirement from service—Intervening death of applicant—Fate of proceedings—Applicant's heirs, or dependants, not possessing a legitimate interest of their own in the subject matter—As distinct from an eventual right to damage vesting in the estate—Proceedings abated.*

*See also under Administrative Law, above.*

By this recourse the applicant challenged the validity of his retirement from the service as elementary school teacher. In this respect the present case is similar to the case *Soteriou and the Greek Communal Chamber and Another reported in (1965)3 C.L.R. 334* and at p. 83 (*ante*) of this part. While the case was pending the applicant

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died. On the question whether or not the recourse was abated because of the applicant's death, the Court in deciding in the affirmative:-

*Held*, (1) bearing in mind the principles laid down in the case *Chrysostomides and the Greek Communal Chamber* 1964 C.L.R. 397 I have reached the conclusion that the heirs, or dependants, of applicant do not possess a *legitimate interest of their own* so as to enable this recourse to proceed in their own name, or on their own behalf, after the death of the applicant, and I have, therefore, to hold that this recourse has been abated, due to the death of the applicant, and has to be dismissed accordingly.

(2) I have reached this conclusion, bearing especially in mind that the heirs, or dependants, of applicant are no longer entitled to the payment to them of his pension after his death. Also, the gratuity due to the applicant has been paid to him in full and it has not been alleged that had the applicant been employed for any further period this would have resulted in any increase in his gratuity or pension.

(3) Counsel for applicant has also submitted that if this recourse were to be decided in favour of applicant, even after his death, then the heirs of applicant would be entitled to the difference between his salary and his pension for the material time. But this could only be a right to damages vesting in the estate as a result of the outcome of the recourse, and as I have already held in *Chrysostomides'* case (*supra*) such a right does not suffice to vest in the heirs a *legitimate interest of their own*, for the purpose of the proceedings being continued in spite of the applicant's death.

*Recourse abated, dismissed.*

Cases referred to:

*Chrysostomides and the Greek Communal Chamber* 1964  
C.L.R. 397, followed and applied.

### Recourse.

Recourse against the decision of the respondent concerning the date of applicant's retirement as a teacher.

Fr. Markides with A. Triantafyllides for the Applicant.  
G. Tornaritis for the Respondents.

Cur. adv. vult.

The following Judgment was delivered by:—

TRIANAFYLLIDES, J.: While this case was pending Applicant died. The Case was let, however, by consent, to proceed to this stage, together with other related cases with which it was being heard together, and the question of the effect of the death of Applicant on the fate of this recourse was thus left to be decided at the time of pronouncing Judgment therein.

The effect of the death of an Applicant in an administrative recourse has been discussed by this Court in *Chrysostomides and The Greek Communal Chamber*, (1964 C.L.R. 397).

Bearing in mind the principles expounded on that occasion, and applying them to the particular situation of the present Case, I have reached the conclusion that the heirs, or dependants, of Applicant do not possess a *legitimate interest of their own*, so as to enable this recourse to proceed in their own name, or on their own behalf, after the death of Applicant, and I have, therefore, to hold that this recourse has been abated, due to the death of Applicant, and has to be dismissed accordingly.

I have reached this conclusion, bearing especially in mind that the heirs, or dependants, of Applicant are no longer entitled to the payment to them of his pension, after his death. Also, the gratuity due to Applicant has been paid to him in full and it has not been alleged that had applicant been employed for any further period this would have resulted in any increase in his gratuity or pension; and indeed from the relevant records in the personal file of Applicant, exhibit 32, it does appear that Applicant has in fact served for the period entitling him to maximum retirement benefits.

Counsel for Applicant has suggested that had Applicant died in active service then the provisions of section 62 of the Elementary Education Law, Cap. 166, would have come into effect. But in a case such as the present, where Applicant during his lifetime has already received the gratuity due to him and was already in receipt of pension, I really do fail to

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see how such provisions could be of any assistance for the purpose of enabling this recourse to proceed after Applicant's death.

Counsel for Applicant has also submitted that if this recourse were to be decided in favour of Applicant, even after his death, then the heirs of Applicant would be entitled to the difference between his salary and his pension, for the material time. But this could only be a right to damages vesting in the estate as a result of the outcome of the recourse, and as I have already found in *Chrysostomides and The Greek Communal Chamber (supra)* such a right does not suffice to vest in the heirs a legitimate interest *of their own*, for the purpose of the proceedings being continued in spite of the death of an Applicant.

I should state, however, that had Applicant lived to see the end of these proceedings, and had his recourse not been abated because of his death, I would have had no difficulty in deciding this recourse in his favour in the same manner, and on the same grounds *mutatis mutandis*, as in Case 161/63;\* in this respect my Judgment in that Case may be usefully considered as being part of this Judgment, too.

For this reason I have thought fit to draw the attention of the appropriate authorities to what would have been the outcome, otherwise, of this recourse, so that they may possibly deem fit, on no doubt strong moral grounds, to make in the case of Applicant's heirs the same provision, by way of any possible future financial settlement, as may be made in the case of any other successful Applicant in one of the related Cases of retirement of school-teachers, with which the present Case has been heard together.

In the circumstances I have decided that I should make no order as to costs.

*Recourse abated, dismissed.  
No order as to costs.*

\*Vide *Soteriou and The Greek Communal Chamber and Another*, reported in (1965) 3 C.L.R. 334 and at p. 83 (*ante*) of this part.