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Sept. 28

[MALACHTOS, J.]

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DEMETRIOS  
PAPADOPOULLOS  
v.  
MUNICIPALITY  
OF NICOSIA  
AND ANOTHER

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DEMETRIOS PAPADOPOULLOS,

*Applicant,*

*and*

1. THE MUNICIPALITY OF NICOSIA,
2. THE REPUBLIC OF CYPRUS, THROUGH THE  
DISTRICT OFFICER NICOSIA,

*Respondents.*

(Case No. 16/72).

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*Recourse under Article 146 of the Constitution—Abatement—Principles applicable—Events occurring after filing but before hearing of the recourse—Subject matter of the recourse ceasing to exist before the hearing—Abatement of the recourse—Recourse against appointment to the temporary post of Administrative Officer in the Nicosia Municipality—Abolition of said post after filing but before hearing of the recourse—Thus, the legitimate interest required under Article 146.2 of the Constitution not subsisting on date of hearing—Consequently, the recourse lapses and cannot proceed.*

*Abatement of recourse under Article 146 of the Constitution—Due to events occurring after filing but before hearing of the recourse—See further supra.*

*Legitimate interest required under Article 146.2 of the Constitution—Must continue to subsist on the date of the hearing—Otherwise the recourse lapses—See further supra.*

This is a recourse under Article 146 of the Constitution directed against the decision of the respondents dated November 22, 1971, to appoint the interested party to the post of Temporary Administrative Officer in the Nicosia Municipality, instead of, and in preference to, the applicant in these proceedings. The present recourse was filed on January 20, 1972. By a publication in the local press on July 9, 1971 the respondent Municipali-

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ty advertised the aforesaid temporary post and invited applications therefor. It was made clear in the said publication that the successful applicant, if his services were proved satisfactory, would be destined for appointment to the Permanent post of Town Clerk which would be vacated in October 1972.

On October 9, 1972, the interested party was appointed to the permanent post of Town Clerk, which decision was approved on November 2, 1972 by the District Officer, Nicosia in accordance with the relevant provisions of section 67 (3) of the Municipal Corporations Law, Cap. 240 (as re-enacted). It was argued by counsel for the respondent Municipality that upon the said appointment in October–November 1972 (*supra*) of the interested party to the post of Town Clerk, the post of Temporary Administrative Officer ceased to exist as it was merely a temporary post in order to enable the Municipality to find the suitable person for the post of Town Clerk (*supra*). That being so, the present recourse is abated because after its filing and before the hearing it remained without object *i.e.* its subject matter ceased to exist.

Declaring the recourse abated and dismissing the recourse, the learned Judge:

*Held*, (1) It is a well established principle of administrative law that a recourse may be abated as a result of events which take place subsequently to the filing and before the hearing of such recourse; and there can be no doubt that a recourse cannot continue when its subject matter ceased to exist (see: *Christos Malliotis and Others v. The Municipality of Nicosia* (1965) 3 C.L.R. 75; cf. also *Kyriakos Chrysostomides v. The Greek Communal Chamber*, 1964 C.L.R. 397, at p. 402).

(2) In the present case, it is not in dispute that the post of Temporary Administrative Officer in which the interested party was appointed by the decision subject matter of this recourse had been abolished prior to the hearing of this recourse as a result of the appointment of the said interested party in October–November 1972, to the permanent post of Town Clerk of the respondent Municipality. That being so, the legitimate interest of the applicant, required under Article 146.2 of the Constitution, to challenge the *sub judice* temporary appointment of the interested party on November 22, 1971 (*supra*) did not subsist on the date of the hearing.

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(3) For these reasons, this recourse cannot proceed as it has been abated due to events that occurred after the filing (January 1972) and before the hearing.

*Recourse dismissed. No order as to costs.*

Cases referred to:

*Christos Malliotis and Others v. The Municipality of Nicosia*  
(1965) 3 C.L.R. 75;

*Kyriakos Chrysostomides v. The Greek Communal Chamber,*  
1964 C.L.R. 397, at p. 402.

**Recourse.**

Recourse against the decision of the respondents to appoint the interested party to the post of Administrative Officer in the Nicosia Municipality in preference and instead of the applicant.

*E. Markides (Mrs.),* for the applicant.

*K. Michaelides,* for respondent No. 1.

*L. Loucaides,* Senior Counsel of the Republic, for respondent No. 2.

*Cur. adv. vult.*

The following judgment was delivered by:-

MALACHTOS, J.: The applicant in this recourse claims a declaration of the Court that the decision of the respondents to appoint the interested party Andreas Andreades, to the post of Administrative Officer in the Nicosia Municipality, is *null* and *void* and of no legal effect whatsoever.

The following are the facts that led to the present litigation.

By a publication dated 8.7.71, which appeared in the local press on 9.7.71, respondent 1 advertised the post of Temporary Administrative Officer in the Nicosia Municipality and invited applications thereto. It was made clear in the said publication that the successful applicant, if his services were proved satisfactory, would be destined for appointment to the Permanent post of Town Clerk which would be vacated in October, 1972. The duties and responsibilities of the person to be appointed, as well as the qualifications required for such appointment, also appeared in the said publication. The applicant and the interested party were among the candidates who applied for the

post and who were interviewed by the members of the respondent Municipal Committee.

The respondent Committee at its meetings held on the 18th and 22nd November, 1971, and after considering the merits, qualifications and experience of the candidates interviewed, as well as their performance during the interview, decided to appoint the interested party, who was duly qualified under the relevant scheme as the most suitable candidate for the post. The applicant being dissatisfied from the said decision filed on 20.1.72, the present recourse:

On 26.2.73 when this recourse came on for hearing before the Court, counsel for respondent 1 submitted, and counsel for applicant agreed, that the Court would decide as a preliminary legal issue whether this recourse, due to intervening events; between its filing and the hearing, has become abated.

The intervening events which are not in dispute, are the following:

The interested party shortly after his appointment to the Temporary post of Administrative Officer, was sent by the Nicosia Municipality to the United Kingdom where he served in various branches of the Lincolnshire Municipal Corporation as an apprentice for a period of about six months and returned to Cyprus in June, 1972.

On 1.7.72 the then Town Clerk of the Nicosia Municipality obtained his leave prior to retirement. Respondent 1 at its meeting held on 22.6.72, appointed the interested party as from 1.7.72 as acting Town Clerk of the Nicosia Municipality. On 9.10.72 respondent 1 decided to appoint the interested party to the permanent post of Town Clerk of the Nicosia Municipality as from 1.10.72. The said decision of respondent 1 of the 9.10.72 was approved on 2.11.72 by the District Officer of Nicosia in accordance with the relevant provisions of section 67 (3) of the Municipal Corporations Law, Cap. 240.

It has been argued by counsel for respondent 1 that upon the appointment of the interested party as a Town Clerk, the post of Administrative Officer, ceased to exist as it was merely a temporary post in order to enable respondent 1 to find the proper person with a view to appoint him, if proved suitable, as a Town Clerk.

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The decision of 9.10.72 taken by respondent 1 is a new administrative executory act which was not challenged by anybody and, therefore, according always to his submission, is a final administrative executory act.

It was further submitted by counsel for respondent 1 that in view of this new executory administrative act and in view of the fact that the post of administrative officer has been abolished, this recourse, which has the only object to attack the appointment of the interested party to the temporary post of Administrative Officer, is abated and cannot proceed.

On the other hand, counsel for applicant argued that in view of the fact that the appointment in question was of a temporary nature, the decision complained of did not lose its executory nature as a result of the new decision of the 9.10.72 because the decision complained of was not revoked or annulled but as being of a temporary nature expired after the lapse of the time for which it was made. This does not mean that the legal results expired with it. Furthermore, the decision complained of has not been embodied or merged in the new decision so as to lose its executory character.

It is a well established principle of administrative law that a recourse may be abated as a result of events which take place subsequently to the filing and before the hearing of such recourse, and there can be no doubt that a recourse cannot continue when its subject matter has ceased to exist (*Christos Malliotis and Others v. The Municipality of Nicosia* (1965) 3 C.L.R. 75).

In the case of *Kyriakos Chrysostomides v. The Greek Communal Chamber*, 1964 C.L.R. 397 at page 402, we read:

“ Though no express provision is to be found in Article 146 itself, under which this recourse has been made, yet, paragraph 2 of the said Article, may be usefully referred to. It provides that ‘..... a recourse may be made by a person whose any existing legitimate interest ..... is adversely and directly affected .....’. Thus expression is given to the basic condition precedent of the annulment jurisdiction of an administrative Court, viz., the existence of an interest of an applicant. A recourse for annulment is not an *actio popularis*; it requires in respect of the applicant a *legitimatio ad causum*. (*Vide Fleiner ibid*, p. 243).

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In Greece where an analogous provision such as Article 146.2 exists in the corresponding legislation (see section 48 of Law 3713/1928) the view is that the requisite interest of the applicant must subsist on the date of the hearing of a recourse as well (*vide* 'The Recourse for annulment before the Council of State', 2nd ed. p. 42 by Tsatsos). Such view is a reasonable consequence of the premise that a recourse for annulment is not an *actio popularis*. This being so, I am of the opinion that the same holds good in the case of Article 146.2".

In the present case, it is not in dispute that the temporary post of Administrative Officer, in which the interested party was appointed, had been abolished prior to the hearing of this recourse by the appointment of the interested party to the permanent post of Town Clerk and so the legitimate interest of the applicant did not subsist on the date of hearing.

For these reasons this recourse cannot proceed as it has been abated due to events that occurred after the filing and before the hearing.

As regards the question of costs, taking into consideration the facts of the case, I make no order.

*Application dismissed. No  
order as to costs.*