

1988 June 30.

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THEANO AGATHANGELOU,

*Applicant,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
THE DIRECTOR OF SOCIAL INSURANCE DEPARTMENT,

*Respondent.*

(Case No. 1067/87).

5 *Constitutional Law—Marriage, dissolution of—Constitution, Art. 111—  
Foreign decree of divorce—Recognition of—Depends on whether both parties  
had acquired the domicile of the foreign country—Decision to grant  
widow's pension revoked on ground that marriage had been dissolved by  
an English decree—Matter of domicile never probed into—Revocation  
fraught with misconception.*

*Reasoning of an administrative act—Collapse of—Whether act can be saved on  
the basis of an alternative foundation.*

10 The decision to award widow's pension to applicant was revoked on the  
ground that her marriage with her late husband had been dissolved prior to  
his death by an English decree. The respondent was not impressed by the  
argument that the decree was, in the light of Art. 111 of the Constitution, a  
nullity.

15 Counsel for the respondent sought to justify the decision by reference to  
another factor, i.e. that the applicant did not cohabit with her husband at the  
time of the latter's death.

Held, annulling the sub judice decision:

(1) The marriage of the parties was subject to the provisions of Art. 111

and the personal status of the parties continued to be subject to its provisions unless both parties became the domiciliaries of a foreign country that recognized a different rule respecting the termination of marriage. The domicile of the parties was never probed by the Director. Consequently, the basis of the decision of the Director is fraught with misconception. 5

(2) Notwithstanding the collapse of the premise upon which an administrative decision is founded, such decision may be sustained on an alternative foundation, if such foundation surfaces incontrovertibly from the administrative records. This is not the case here.

*Sub judice decision annulled.* 10  
*No order as to costs.*

*Cases referred to:*

*Tyllirou v. Tylliros*, 3 R.S.C.C. 21;

*Metaxa v. Mitta* (1987) 1 C.L.R. 1;

*Koutsokoumnis v. Christodoulou* (1981) 1 C.L.R.58; 15

*Papasavvas v. Johnstone* (1984) 1 C.L.R. 38;

*Papaleontiou v.Republic* (1967) 3 C.L.R. 624;

*Oryctaco Ltd. v. The Republic* (1981) 3 C.L.R. 174;

*Louca v. The Republic* (1986) 3 C.L.R. 1640;

*Korai and Another v. The Republic* (1973) 3 C.L.R. 546; 20

*Mavrommatis v. Educational Service Commission* (1974) 3 C.L.R. 126.

**Recourse.**

Recourse against the decision of the respondent to revoke an earlier decision whereby widow's pension had been granted to the applicant on the death of her husband. 25

*N. Papaefstathiou*, for the applicant.

*A. Vassiliades*, for the respondent.

*Cur. adv. vult.*

5     **PIKIS J**, read the following judgment. The subject of this re-  
 course is the validity of a decision of the Director of Social Insu-  
 rance to revoke an earlier decision whereby widow's pension had  
 been awarded to the applicant on the death of her husband that  
 had occurred on 28.7.1981. The revocatory act was founded on a  
 10     decree of an English Court dissolving the marriage between the  
 applicant and her late husband issued as far back as 30th April,  
 1974. The Director took the view that the English decision termi-  
 nated the marriage between the parties. He remained unimpressed  
 by representations made on behalf of the applicant to the effect  
 that the English decree was ineffective in view of the provisions  
 15     of Art. 111 of the Constitution and on that account had no noticea-  
 ble consequences on the status of the parties.

20     Counsel for the Republic acknowledged that the decision of  
 the Director was founded on a misconception of the law, notably,  
 the provisions of Art. 111 of the Constitution and that the mar-  
 riage between the parties was not ended by the decree of the Eng-  
 lish Court. A certificate issued by the Holy See of Limassol on  
 24th August, 1987, certified that the marriage between the parties  
 was never dissolved.

25     The ambit and effect of Art. 111 of the Constitution was the  
 subject of analysis in a good number of cases. (See, inter alia,  
*Tyllirou v. Tylliros*, 3 R.S.C.C.21; *Metaxa v. Mitta* (1987) 1  
 C.L.R. 1; *Koutsokoumnis v. Christodoulou* (1981) 1 C.L.R.  
 58). In *Papasavvas v. Johnstone* (1984) 1 C.L.R. 38, I examined  
 30     the implications of Art. 111 in juxtaposition to the relevant princi-  
 ples of Private-International Law in order to ascertain the position  
 of members of the Greek Orthodox Church who are domiciliaries  
 of a foreign country. I concluded that Art. 111 applies to every  
 member of the Greek Orthodox Church provided they are domi-

ciled in Cyprus.

In this case it is unnecessary to debate further the implications of Art. 111 of the Constitution. Suffice it to say that the marriage of the parties was subject to the provisions of Art. 111 and the personal status of the parties continued to be subject to its provisions unless both parties became the domiciliaries of a foreign country that recognized a different rule respecting the termination of marriage. The domicile of the parties was never probed by the Director. On the contrary, he assumed that the English decree automatically brought the marriage to an end and altered the status of the parties. This was a misconception. The correct premise would be to treat the personal status of the parties as being subject to the provisions of Art. 111 unless it was established that both became domiciliaries of the United Kingdom. Consequently, the basis of the decision of the Director is fraught with misconception.

Nevertheless, counsel for the Republic submitted that the decision is supportable by reference to other grounds disclosed by the facts in the file of the case. In particular he argued that as a result of the separation he presumed to have followed the English decree, the parties ceased to cohabit and on that account the claim to widow's pension was liable to be dismissed for failure to satisfy a basic prerequisite to such entitlement, (Section 39, Law 41/80) that is, cohabitation.

The question of cohabitation was never investigated by the Director nor were the allegations of the applicant that cohabitation continued notwithstanding the issue of the English decree of divorce. Faulty reasoning or more precisely the collapse of the premise upon which an administrative decision is founded does not inevitably expose the decision to annulment. The decision can be sustained provided it is underpinned by material in the administrative records establishing an alternative basis for its validity. (*Papaleontiou v. Republic* (1967) 3 C.L.R. 624; *Oryctaco Ltd. v. Republic* (1981) 3 C.L.R. 174; *Louca v. Republic* (1986) 3 C.L.R. 1640). For administrative action to be validated through

5 this process, the alternative foundation must surface incontrovertibly on consideration of the material in the file and as such be objectively noticeable. *Korai & Another v. Republic* (1973) 3 C.L.R. 546; *Mavrommatis v. E.S.C.* (1974) 3 C.L.R. 126). The existence of such alternative basis supporting the decision must not derive from speculation or forecast of the likely reaction of the Administration to a correct perception of the facts or the law.

10 In this case the issue of cohabitation between the parties was never probed by the Director; his decision rested solely on the erroneous appreciation of the implications of the English decree. Upon banishment of the misconception there is nothing in the file to support the sub judice decision: The recourse must, therefore, succeed. The sub judice decision is hereby declared to be wholly void and of no effect whatsoever and so I declare it to be pursuant to the provisions of para. 4 (b) of Art. 146 of the Constitution.  
15 There will be no order as to costs.

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