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IN THE MATTER OF THE ILLEGITIMATE CHILDREN LAW, 1955
and
IN THE MATTER OF AN APPLICATION BY VASSOS ZACHARIA LOPHITIS

[O' BRIAIN, P., ZEKIA, VASSILIADES and JOSEPHIDES, JJ.]

IN THE MATTER OF THE ILLEGITIMATE CHILDREN LAW, 1955,

And

IN THE MATTER OF AN APPLICATION BY VASSOS ZACHARIA LOPHITIS,

Appellant-Applicant.
(*Civil Appeal No.* 4324).

Illegitimate Children—Legitimation—Legitimation proceedings—
—The Illegitimate Children Law, Cap. 278, *section* 6*—Application by the child—Where the father has recognized by his will the child as his—Section* 6(2) *proviso—Recognition must be express and not implied.*

The appellant is the illegitimate child of a certain Zacharias Lophitis of Limassol, who died on the 1st November, 1959. By his will dated the 29th October, 1946, the deceased provided, inter alia, as follows: "I give and bequeath to Vassos Zacharia Lophitis, of Limassol, illegitimate son of Theodora Ioanni Kouzari of Limassol....." and then follow the various legacies given to the appellant. Relying on the Illegitimate Children Law, 1955, now Cap 278, section 6 (2), the appellant applied to the District Court of Limassol for an order declaring him the legitimate son of the aforesaid deceased. Section 6 provides:

"(1) An illegitimate child may be declared legitimate by an order of a Court under the provisions of this section.

(2) An order under sub-section (1) may be made on application to the Court by or on behalf of the father: Provided that where the father is dead such application may be made by the child himself if the father has recognized by his will the child as his".

The District Court made a finding that the applicant-appellant was the natural son of the deceased but refused the declaration applied for. It was argued on behalf of the appellant that the expression "has recognized..... the child as his" occurring in the proviso to sub-section (2) of section 6 (*supra*) should be interpreted to mean "treated the child as his", whereas counsel for the respondents submitted that

the word "recognized" referred to therein implies a solemn, formal act of recognition by the terms of the will and that an intention on the part of the father to legitimate his child must be found in the will in express terms.

Held: (1) *Per O' BRIAIN, P.:* At a minimum there must be something in the will amounting to a clear and unequivocal acceptance or admission of the fact that the child is the off-spring of the testator. I am unable to find in the terms of this will any such "recognition" of the applicant. Indeed, some of the phraseology of the will, particularly the first sentence of paragraph 3 (*note:* it is the passage quoted in the head-note) gives me the impression of being a rather studied avoidance of making any assertion regarding the paternity of the appellant in a context where it would have been not unnatural to have mentioned it. Accordingly, in my view, for that reason, this appeal fails and must be dismissed.

(2) *Per ZEKIA, J.:* I am inclined to the view that the word "recognition" implies an intent, desire or consent on the part of the testator that his natural child be considered as one of his children or as his child. The issue is not whether from the contents of the will it may be inferred that the applicant is the natural son of the testator but whether the deceased by his will intended clearly to recognize him as his child or rank him with his other children. I draw a distinction between the contents of a will from which it may be inferred that the testator is the father of a natural child and from the provisions of a will by which the father clearly states that an applicant is his child.

I agree, therefore, that the appeal should be dismissed.

(3) *Per VASSILIADES, J.:* In my judgment, the recognition required by the statute, must not only be in clear and unequivocal terms, but it must be capable of showing an intention on the part of the father to enable the child to take after his father's death, the legitimation proceedings which the father failed to take, for one or another reason, during his lifetime. It must be in the nature of a recognition of paternity as known to the legal systems from which this part of our law is derived.

The result of these conclusions is that the appellant, having failed to bring his case within the proviso to sub-section (2)

cannot take the present legitimation proceedings; and the District Court were right in dismissing his application.

(4) *Per JOSEPHIDES, J.:* Reading section 6 of our Law as a whole, and having regard to the other provisions of that Law, as well as the object of the legislature to provide for the protection of illegitimate children without unduly interfering with the lawful family of the natural father and its underlying basis, the sanctity of marriage, I have no hesitation in holding that the recognition provided in our law must be an express and not an implied recognition of the child by the father.

As there is no such express recognition of the appellant in the will of the deceased this appeal fails, and is accordingly dismissed.

Appeal dismissed.

Cases referred to :

The minor Michael, the child of M. Orphanides of Nicosia v. *Iacovos Pavlou Iacovou of Famagusta*, Civil Appeal No. 4114 (*unreported*) decided on 30.11.54.

Appeal.

Appeal by the applicant against the order of the District Court of Limassol (Michaelides Ag. P.D.C. and Ilkay, Ag. D.J.) dated the 19th November, 1960, (ApplicationNo.10/60) dismissing his application for an order of the Court declaring him as the legitimate child of Zacharias Lophitis of Limassol, deceased.

Chr. P. Mitsides for the appellant.

P.L. Cacoyannis with *G.M. Nicolaides* for respondents Nos. 1 & 2.

M. Houry for respondents Nos. 3 and 4.

Cur. adv. vult.

The facts sufficiently appear in the judgments delivered by the Members of the Court.

O' BRIAIN, P. : This is an appeal brought by the appli-

cant against the order made in this matter by the District Court of Limassol on the 19th day of November, 1960.

The application was made, pursuant to the provisions of the Illegitimate Children Law 1955, claiming an order, under section 6 of that Act, declaring the applicant legitimate. That section provides that an illegitimate child may be declared legitimate by an order of a Court. Sub-section (2) enacts that the application may be made to the Court by or on behalf of the father, "provided that where the father is dead such application may be made by the child himself if the father has recognized by his will the child as his". In this case, the applicant alleges that he is the illegitimate son of Zacharias Lophitis of Limassol and of one Theodora Ioannou Kouzari. The said Zacharias Lophitis did not make any application to legitimate the applicant during his lifetime. He died on the 1st day of November, 1959. His last will and testament was made on the 29th day of October, 1946, and the present application was based upon the terms of that will, claiming that the said Zacharias Lophitis had, thereby, "recognized" the applicant as his child.

I am content to decide this appeal upon one point, namely whether or not applicant did "recognize by his will" within the meaning of the proviso to section 6 sub-section (2) the applicant. There is no definition of the term "recognize" in the Act. Sir Panayiotis Cacoyannis on behalf of respondents No.1 and 2 has argued that this implies a solemn, formal act of recognition by the terms of the will. Mr. Houry on behalf of respondents 3 and 4 has submitted that an intention to legitimate the applicant must be found in the will in express terms. I do not find it necessary to decide either of these points and I do not wish to be taken as so holding. I shall assume that Mr. Mitsides is correct in stating that, in the context in the section, the words "has recognized by his will" means no more than the testator by the terms of his will has, in fact, treated the applicant as his child ; whether or not he intended to assert his paternity. Putting myself in the chair of the testator, as Mr. Mitsides has correctly argued a court should do, and reading the will in the light of the facts proved before the Court, it seems to me that the furthest one can go in favour of the appellant is to say that there is clearly nothing in the will inconsistent with the applicant being a child of the testaror. In my view, however, that is not sufficient. At a minimum, I think,

there must be something in the will amounting to a clear and unequivocal acceptance or admission of the fact that the applicant was the off-spring of the testaror, legitimate or illegitimate. I am unable to find in the terms of this will any such "recognition" of the applicant. Indeed, some of the phraseology of the will, particularly the first sentence of paragraph 3 gives me the impression of being a rather studied avoidance of making any assertion regarding the paternity of the appellant in a context where it would have been not unnatural to have mentioned it. Accordingly, in my view, for that reason this appeal fails and must be dismissed.

ZEKIA, J. : There is only one point which falls for decision for the disposal of this appeal, namely whether the parts of the will referred to by the appellant amount to a recognition by the deceased testator that the appellant is a child of his within the meaning of sub-section (2) of section 6 of the Illegitimate Children Law, Cap. 278. In my view the parts relied upon fall short of such recognition.

I am inclined to the view that the word "recognition" implies an intent, desire or consent on the part of the testator that his natural child be considered as one of his children or as his child. The issue is not whether from the contents of the will it may be inferred that the applicant is the natural son of the testator but whether the deceased by his will intended clearly to recognize him as his child or rank him with his other children. I draw a distinction between the contents of a will from which it may be inferred that the testator is the father of a natural child and from the provisions of a will by which the father clearly states that an applicant is his child.

I agree, therefore, that the appeal should be dismissed.

VASSILIADES, J. : The present appeal turns on the question whether the deceased Zacharias Vassiliou Lophitis late of Limassol, has recognized the appellant, by his will, to be his (the testator's) child, so as to enable the appellant to take the present legitimation proceedings under s.6 of the Illegitimate Children Law (Cap. 278).

The appellant claiming to be the illegitimate son of the deceased, applied to the District Court of Limassol about 3 months after his alleged father's death, for a legitimation

order, under section 6 of the statute in question which, as far as material to the present proceeding reads as follows:—

"6. (1) An illegitimate child may be declared legitimate by an order of a Court under the provisions of this section".

(2) An order under sub-section (1) may be made on application to the Court by or on behalf of the father :

Provided that where the father is dead such application may be made by the child himself if the father has recognized by his will the child as his".

Appellant's application was supported by affidavits, one by himself and one by his mother, to the effect that the appellant was the natural son of the deceased, and that he was recognized as such in the latter's will of the 29th October, 1946, made about 13 years prior to the testator's death, which occurred on the 1st November, 1959. The affidavits purported further to satisfy the other requirements of the statute.

The application was opposed by the administrator of the estate of the deceased with will annexed ; and by the testator's legal heirs, consisting of his widow and two sisters. The deceased had no children by his lawful wife, whom he married in 1929, some fourteen years after the birth of the appellant.

The parties opposing the application denied that the deceased was the father of the appellant ; and, in any case, denied that the deceased testator recognized the appellant as his child by his will.

The case went to trial on both these issues, equally material for the determination of the proceeding.

Upon the evidence adduced, which includes the will of the deceased, (put in as exhibit 1) and the testimony of the appellant (P.W.2) and his mother (P.W.3), the trial court, after hearing elaborate arguments by able counsel, mainly on the legal aspect of the case, found as a fact that the appellant is the natural son of the deceased ; but reading the will, the court were unable to find therein the recognition required

by section 6, to enable the appellant to take the present proceeding. The relative part of the judgment reads :

> ".....We find ourselves unable to reach the conclusion that in the deceased's will there is recognition of the applicant as his son, even if the surrounding circumstances are looked into. On the contrary, the wording of the will, in so far as it relates to the applicant, is such as to show that the deceased entertained no intention whatever of recognizing the applicant as his son expressly or by implication".

In these circumstances the trial-court dismissed the application, with costs.

Against this judgment the appellant now appeals, mainly on the ground that the District Court "erroneously and against the weight of evidence decided that there is no recognition of the appellant by the deceased in his will, as his son". Learned counsel for the appellant argued that reading the will as a whole, in the light of the finding by the trial-court that the appellant is in fact the natural son of the deceased, this Court can reach the conclusion that the testator intended to recognize his son by his will, and in effect he did so.

Learned counsel referred us in this connection to several cases decided in England, where wills were liberally interpreted by the courts in the way required to give effect to the intention of the testator.

The question which falls to be decided in this appeal is, as I have already said, whether the deceased has recognized by his will, exh. 1, the appellant as his child, so as to satisfy the requirements of section 6, under the provisions of which, the appellant seeks a legitimation order.

I may say at once that in this connection, English decisions can be of little assistance to us, as the very notion of legitimation by will, is so far unknown to the English law. Legitimacy and not legitimation, was the question which the English Courts had to deal with, until the enactment of the Legitimacy Act, 1926. And after that, questions of legitimation were confined to the provisions of that enactment.

In Halsbury's Statutes of England, 2nd Ed., Vol. 2, at p. 493, the enactment in question is described as "an Act to amend the law relating to children born out of wedlock". And immediately underneath, one reads :—

"This Act, which, for the first time in English law, recognizes to a limited extent, the principle of legitimation by subsequent marriage, deals both with the conditions precedent to legitimation and the effect of legitimation. The cases cited in the notes, stress the importance of this division, which is not always apparent from the Act itself. As to the legal position of an illegitimate person generally, see 2 Halsbury's Laws (2nd Edn.) 574-578".

In Vol. 3 of the 3rd Edn. of Halsbury's Laws of England, the subject is dealt with in the chapter of Bastardy and Legitimation, Part 3 of which, at p.98, covers the determination of legitimacy in legal proceedings.

The Legitimacy Act and the law relating to Bastardy proceedings in England, have but little similarity with the corresponding legislation in Cyprus, which is the Illegitimate Children Law, 1955, now Cap. 278. They can be of practically no assistance to the problem in hand.

Statutory provision regarding illegitimate children in Cyprus, was first made in 1946 in Part IV of the Wills and Succession Law of that year, which came to replace as from the 1st September, 1946, the Wills and Succession Law 1895. The law of Cyprus until 1946 did not know of proceedings for the legitimation of illegitimate children.

Part IV of the Wills and Succession Law, 1946, consisted of three sections, all under the heading of Illegitimate Children ; sections 52, 53 and 54.

Section 52 provided that an illegitimate child shall have the legal status of a legitimate child in respect of his mother and her relatives by blood ; a notion foreign to English law, as far as I know. And a matter governed by the family law of the parties concerned, in Cyprus, until that time.

Section 53 provided for the legitimation of illegitimate children as from the date of their birth, by the subsequent marriage between their parents, subject to certain conditions regarding co-habitation of the subsequently married couple, at the material time. This was more or less in line with the provisions of the Legitimacy Act in England.

Section 54 on the other hand, provided for the legitimation of illegitimate children by order of a competent Court,

made under the provisions of that section ; again a notion foreign to English law. Legitimation proceedings could be taken by the father, at any time, with the consent of the mother and of the child itself ; or, by the mother of the child, within twelve months of the birth of such child ; subject to certain limitations and conditions, laid down in the section.

In 1954, the Supreme Court of what was then the Colony of Cyprus, dealt with an appeal in a legitimation-proceeding, taken in the District Court of Famagusta, by the mother of an illegitimate child, under the provisions of section 54. (Application No. 39/53 Dist. Court, Famagusta. Appeal No. 4114)

The applicant-mother in that case, was a war-wife of an English serviceman, who married her in Greece in 1946. They lived together for a while, and then they fell apart. In 1951 the wife in question attempted to join her husband then found in Cyprus, but he refused to have anything to do with her. She soon lost his traces and she went to live with a sister in Italy. But finding herself unable to obtain a residence-visa in that country, on her British passport, she came to Cyprus early in 1952, where she met, joined, and co-habited with the respondent in the proceedings, then a bachelor, to the exclusion of all other men, according to the Court's finding. The result of that co-habitation for a period longer than the statutory period of gestation, was a son born in March 1953, for whose legitimation under s.54, the mother applied soon after the child's birth.

In dealing with that case, the Supreme Court of the Colony of Cyprus, with a coram of two British Judges, found it "hard to believe that the legislative authority intended

> virtually to tear up the law of legitimacy which is one of the main pillars of our cherished institution of marriage and the family" ; and went on to express the view that s.54 might be taken as merely ancillary to s.53; and that, if not,
>
> "it would appear to confer extraordinary powers on the Court to alter human relationships and the course of inheritance, with results that nobody could foresee".

As to the mother's position regarding the natural father of her child, the Court thought that the law should provide her with the means to obtain a maintenance order.

Soon after that judgment, the Attorney-General of the Colony, prepared for the Governor, who was then the legislative Authority of the country, a bill entitled the Illegitimate Children Law, 1955, published in the official Gazette of 10th March, of that year, at p.94.

This proposed Law was to replace part IV of the Wills and Succession Law, *i.e.* sections 52, 53 and 54 of that statute, which was then Cap. 220 in the Statute Book of Cyprus. In his statement of the objects and reasons of the enactment in question, the Attorney-General made it abundantly clear that s.54 was not "merely ancillary to s.53" ; but it was there to regulate, at least to a certain extent, the legal position of illegitimate children, whose parents could not, or would not marry one another.

> "Any legislation regulating the legal position of illegitimate children, the Attorney-General said in the first paragraph of his statement at p. 96, has to balance two equally just, but not so consistent principles, that of the preservation of the sanctity of marriage on the one hand, and that of removing a social stigma which may stamp certain persons during their whole lifetime, through no fault of theirs, on the other hand.....
> 4. The recognition of the child by the father has been regulated in various ways by different legal systems".

The learned Attorney-General then goes on to state very briefly the position under the German Civil Code (articles 1723 to 1740) ; the Swiss Civil Code (Article 303 et seq.); the Sheri Law; and the Greek Civil Code (Articles 1530 to 1567).

> "In Cyprus, he then says, the matter is governed by section 54 of the Wills and Succession Law (Cap. 220) which though based on the German Civil Code, yet it proceeds further than its prototype in that it does not require any consent of the wife of the father, and it accords the legal status of a legitimate child, not only as regards the father, but also as regards the father's relatives by blood (contra article 1737 of the German Civil Code). That section of the Wills and Succession Law does not differentiate between legitimation and affiliation proceedings (section 54(2)(b)).
>
> 6. The aforesaid provisions of our Law, the statement of the Attorney-General goes on to say, have been criti-

cized in a recent case by the Supreme Court (Civil Appeal No. 4114).

The object of the proposed Law is to clarify the legal position of illegitimate children, and to provide for their protection without unduly interfering with the lawful family of the natural father, and its underlying basis, the sanctity of marriage".

The Statement then proceeds to say that allowing for the ground covered by the provisions of the Adoption Law, 1954 (now Cap. 274) the proposed Law accords the following methods of protection to an illegitimate child:—

(a) by a subsequent marriage of the parents ;

(b) by a legitimation order ; and

(c) by an affiliation order.

As regards legitimation orders it is significant that according to the Attorney-General's statement in question, these can be made on the father's application only, provided that his wife, if he is married, consents to the order.

We thus, have before us clearly the position for which the Illegitimate Children Law, Cap. 278, came to provide a remedy ; and the type of remedy visualized.

As far as the mother is concerned, the position is clearly settled by section 3 which provides that an illegitimate child shall have the legal status of a legitimate child in respect of his mother and her relatives by blood. All children are born legitimate by operation of law, as far as their mother is concerned, and all her relatives by blood.

As far as the father is concerned, the position is governed by the provisions of section 6. During his life, the father can legitimate his illegitimate child by applying to the Court for a legitimation order. And he may further open the way for a legitimation order on the application of the child after his (the father's death), by recognizing the child as his, by his will.

Approaching section 6 in this light, one can see more clearly, in my opinion, the reason of the proviso to subsection (2) that —

"where the father is dead, such application may be

made by the child himself if the father has recognized by his will the child as his".

The recognition of paternity by the father for the purposes of legitimating an illegitimate child, is to be found also in article 303 of the Swiss Code, and in article 1533 of the Greek Civil Code. (vide Ἀστικὸς Κώδιξ Κωνστ. Καυκᾶ Ἐκδ. 1947 - Βιβλίον Τέταρτον - Οἰκογενειακὸν Δίκαιον Σελ. 86).

Article 1532 provides that the recognition of paternity of a child born out of wedlock, may be made by the father. And if the father died, or was declared dead (ἐκηρύχθη ἄφαντος) or suffers metal disability, the recognition may even be made by the paternal grandfather (p. 83).

The next article 1533, provides that such recognition of paternity by the father or by the paternal grandfather, may be made by solemn declaration before a notary public or by will (p.86).

The position of children born out of lawful wedlock, the effect of voluntary recognition of paternity by the father, the proceedings for judicial declaration of paternity at the instance of the mother or the child, their legal consequences, are the subject of 37 articles in the Greek Civil Code (articles 1530-1567 incl.) which indicates the importance attached to this matter in that country.

Another well known Greek jurist, G.A. Balis in his recent work on Family Law (Οἰκογενειακὸν Δίκαιον, Γ.Α. Μπαλῆ, 1956), in paragraph 159 at p.322 *et seq.* deals with the history of the principle of recognition by the father of children born out of lawful wedlock.

The learned author refers to the position under the Roman Law, and then deals with the approach to this question in different European legal systems, regarding recognition by the parents, particularly the father, on the one hand, and judicial declaration of paternity at the instance of the mother, or of the child, or of other interested parties, on the other hand.

In France recognition as well as judicial declaration of paternity, was permissible until early in the 19th century, when article 340 of the French Code put an end to proceedings for the declaration of paternity (except in cases of ab-

duction) admitting only voluntary recognition by the father. This position was, however, strongly criticized by French jurists, throughout the 19th Century, according to the learned author referred to above, so that article 340 was amended in November 1912, as to allow judicial declaration of paternity in certain other cases therein defined, in addition to the case of abduction.

The German Code on the other hand, does not admit the voluntary recognition by the father, as tending to encourage paternity out of lawful wedlock. It only admits of judicial declaration of paternity (article 1717) the effect of which is more in the nature of an affiliation order carrying responsibility for the maintenance and upbringing of the illegitimate child, than a legitimation order giving the child the status of his father's legitimate offspring. (Οἰκογενειακὸν Δίκαιον Μπαλῆ, 1956, σελ. 325).

The Swiss Code now admits both voluntary recognition by the father, and proceedings against him for judicial declaration of paternity, at the instance of the mother, and of the child. The effect of recognition by the father is legitimation for all intents and purposes, excepting inheritance, where a legitimated child takes only one half of the share of a child born legitimate (articles 303-306, 325 and 461) ; while the effect of a judicial declaration of paternity against the father, is liability to maintain the child until he (or she) is 18 years of age, plus certain compensation to the mother (articles 307, 309, 314, 317 and 319); but in certain cases of paternity, (such as that resulting from a betrothal, or abuse of a fiduciary position vis-a-vis the mother) the effect of a judicial declaration against the father, is to place the child in the same position as that of a legitimated child by voluntary recognition (articles 307, 309, 323, 325 and 461).

In MacNaghten's Principles and Precedents of Mohamedan Law, an edition of the early 19th Century (1825) found in this Court's Library, one can find in the part dealing with precedents of inheritance at p.132, that according to the Hedaya

> "if a person die, having acknowledged a certain child to be his son, and if afterwards the mother declare the child to have been his son and herself to have been his wife, they both inherit".

This was a case of a deceased father with two widows, five sons and two daughters, where there existed "considerable doubt" as to whether the second widow was ever married to the deceased.

Going now to our law and to the case in hand, we have carefully and sympathetically considered the position of the appellant, in view of the finding of the District Court regarding paternity ; a finding well justified in the circumstances of this case.

Accepting that finding, we must then proceed to answer the question whether the deceased has recognized the appellant as his child, by his will (exhibit 1 herein), in the manner required by the proviso to sub-section (2) of section 6 of the Illegitimate Children Law (Cap. 278). The result of our deliberation on the matter, is that the answer to this question must be in the negative. This is the *ratio decidendi* in this case.

But speaking for myself, I would go further and say that I find myself completely in agreement with the view taken by the District Court that the testator in this case, far from recognizing the appellant as his child, he took special care to avoid such recognition in his will. In my judgment, the recognition required by the statute, must not only be in clear and unequivocal terms, but it must be capable of showing an intention on the part of the father to enable the child to take after his father's death, the legitimation proceedings which the father failed to take, for one or another reason, during his lifetime. It must be in the nature of a recognition of paternity as known to the legal systems from which this part of our law is derived.

The result of these conclusions is that the appellant, having failed to bring his case within the proviso to subsection (2) cannot take the present legitimation proceeding; and the District Court were right in dismissing his application.

This appeal must therefore fail and must stand dismissed.

JOSEPHIDES, J. : The appellant in this case applied to the District Court of Limassol for an order declaring him as the legitimate child of one Zacharias Lophitis of Limassol, deceased.

His application was based on section 6 of the Illegitimate

Children Law, Cap. 278. Sub-section (2) of that section reads as follows :

"An order under sub-section (1) may be made on application to the Court by or on behalf of the father :

Provided that where the father is dead such application may be made by the child himself if the father has recognized by his will the child as his".

The appellant's contention is that the said Zacharias Lophitis, who died on the 1st November, 1959, recognized him (appellant) as his child by his will made on the 29th October, 1946. Paragraph 3 of that will, which is material for the purposes of this appeal, reads as follows :

"I give and bequeath to Vassos Zacharia Lophitis of Limassol illegitimate son of Theodora Ioanni Kouzari of Limassol :—....."

And then follow the various legacies given to the appellant.

The question which falls to be decided in this case is the interpretation of the words "the father has recognized by his will the child as his" in section 6(2) of the Illegitimate Children Law.

As already stated, the will is dated the 29th October 1946, and the law in force at the time was section 54 of the Wills and Succession Law, Cap. 220, which came into operation on the 1st September, 1946. That law though based on the German Civil Code it proceeded further than its prototype in that it did not require any consent of the wife of the father, and it accorded the legal status of a legitimate child, not only as regards the father, but also as regards the father's relatives by blood ; and it did not differentiate between legitimation and affiliation proceedings. What is more, under the provisions of the Wills and Succession Law, Cap. 220, section 54, no legitimation order could be made if the alleged father or child was dead. Consequently when the deceased Zacharias Lophitis made his will in October, 1946, even if he wished to recognize the appellant as his child, the law in force at the time would not have helped the appellant to be declared legitimate by an order of the court after the death of the alleged father.

Some 8 1/2 years after the execution of the deceased's will *viz.* on the 28th April, 1955, the present Illegitimate

Children Law, Cap. 278, was enacted and came into force, and section 6 of that law provides that where the father is dead an application for a legitimation order may be made by the child himself if the father has recognized by his will the child as his.

It would seem that that provision of our law is partly based on the Greek Civil Code, which, in its turn, follows to a great extent the provisions of the swiss Civil Code (see Οἰκογενειακὸν Δίκαιον ὑπὸ Γ.Α. Μπαλῆ (1956, page 327).

Articles 1532 and 1533 of the Greek Civil Code provide that the father of an illegitimate child may recognize the child as his by a declaration before a notary public or by his will. This is called voluntary recognition. Article 1560 provides that an illegitimate child may be legitimated by an order of the court on the father's application, who must appear in court in person ; and Article 1564 provides that after the father's death a legitimation order may be made on the application of the child if the father has described or called (ὠνόμασε) the child as his in his will or in a public document, provided certain other requirements of the Law are complied with.

It was submitted on behalf of the appellant that the expression "recognized" the child as his, in sub-section (2) of section 6 of our Law, should be interpreted to mean "treated" the child as his. While, on the other hand, it was submitted on behalf of the respondents that the recognition should be express and formal, and not by implication. In the present case it is common ground that there is no express or formal recognition of the appellant as the deceased's son. On the contrary, paragraph 3 of the Will of the deceased describes him as the illegitimate son of one Theodora Ioanni Kouzari.

Reading section 6 of our Law as a whole, and having regard to the other provisions of that Law, as well as the object of the legislature to provide for the protection of illegitimate children without unduly interfering with the lawful family of the natural father and its underlying basis, the sanctity of marriage, I have no hesitation in holding that the recognition provided in our law must be an express and not an implied recognition of the child by the father.

As there is no such express recognition of the appellant in the will of the deceased this appeal fails, and is accordingly dismissed.

Appeal dismissed.