KYRIAKOS CHRYSOSTOMIDES,

Appellant,

and

THE GREEK COMMUNAL CHAMBER THROUGH THE DISCIPLINARY COUNCIL OF THE ELEMENTARY SCHOOL-TEACHERS,

Respondent.

(Case No. 8/63)

Constitutional and Administrative Law—Article 146 *of the Constitution—Recourse thereunder—Intervening death of the applicant pending proceedings—Effect thereon—Proceedings will be abated by the death unless, inspite of the death, there exists, in relation to the subject matter of such recourse, an existing legitimate interest, in the sense of Article* 146.2 *of the Constitution, vested in the heirs of the applicant as their own, which has been directly and adversely affected by the decision, act or omission complained of—The expectation of claiming damages under Article* 146.6 *of the Constitution after the possible successful outcome of the recourse, by stepping into the shoes of the deceased applicant, is not a sufficient interest of the heirs entitling them to continue such recourse—They must have an interest of their own—Suspension of an elementary school-teacher by way of a disciplinary measure—Recourse against that decision by the teacher—Intervening death of the applicant pending proceedings—Application for amending title of proceedings—No legitimate interest of the heirs of the deceased shown to have been prejudicially affected as aforesaid through such suspension—Proceedings, therefore, abated by reasons of the applicant's death—The Elementary Education Law, Cap.* 166 *sections* 50, 62 (1).

The applicant filed the instant recourse on the 30th January, 1963, and applied for a declaration that his suspension, by way of disciplinary measure, from the post of elementary school-teacher, for a year as from the 8th January, 1963, is null and void. He died, while this recourse was pending, on the 23rd June, 1963. His heirs, and also dependants, are his parents, a brother and two sisters.

When this case came up for hearing counsel for applicant sought to have the title of the proceedings amended by sub-

stituting in the place of applicant the administrators of his estate, his father and mother.

In view of the fact that such amendment would be only a possible procedural corollary of the determination of the substantive issue as to whether or not this recourse could proceed to hearing in spite of the intervening death of applicant, it was directed that the question of the amendment should be shelved pending the determination of such substantive issue.

On the 3rd October, 1964, a ruling was given by the court on the above issue (Ruling published post, at p. 401), whereby it was ruled and :

Held, (1) the relevant principle applicable in case of the death of an applicant during a pending recourse is as follows :

> " When in spite of the death there exists, in relation to the subject matter of such recourse, an existing legitimate interest, vested in the heirs of applicant as their own, which has been directly and adversely affected, then the recourse may be continued by the heirs. If this is not so, then the recourse is abated."

(2) The expectation of claiming damages, after the possibly successful outcome of a recourse, by stepping into the shoes of a deceased applicant, is not a sufficient interest of the heirs entitling them to continue such recourse. They must have an interest of their own.

(3) There now remains, in the light of all the foregoing to decide whether the heirs of applicant in the case have a legitimate interest of their own which has been directly and adversely affected by his suspension so that they may be entitled to continue this recourse. On this point I would like to hear counsel further. It is *e.g.* possible that through the suspension of applicant his heirs have been deprived of some benefit by way of pension, gratuity or other grant to which they would have been entitled under the relevant legislation applicable to applicant at the time of his death.

At the resumed hearing, counsel for applicant contended that the heirs could continue the recourse in view of the following :

(*a*) Applicant's suspension may have been treated as a break in service, for the purpose of section 50 of the Elemen-

tary Education Law, Cap. 166, in such a manner as to deprive the dependants of applicant of the full gratuity.

(*b*) The dependants were granted by the Greek Communal Chamber a gratuity of £236, under section 62 (1) of the same law, and his death while he was suspended may have caused the Chamber to grant only this gratuity, rather than the full amount of commuted pension gratuity or a year's salary which otherwise would have been granted.

(*c*) The respondent did not pay the dependants any gratuity in respect of applicant's service before 1960.

(*d*) If the suspension were to be annulled, the dependants would be entitled to claim the salaries which the applicant would have claimed in such a case, if alive in respect of the month when he had been treated as suspended.

The court on 18th December, 1964, delivered its judgment, (*vide* post, at p. 406), rejecting those contentions :

Held, (1) *On contentions* (*a*) (*b*) *and* (*c*) (supra) :

The suspension of applicant did not prejudicially affect any interest of the heirs of applicant, so as to entitle them to continue this recourse because—

(*a*) it was not treated as a break of service under section 50 of Cap. 166 ;

(*b*) it did not prevent the service of applicant, down to the time of death, from being taken into account for the purpose of granting his dependants a gratuity ;

(*c*) the non-granting of a gratuity in respect of any service before the 16th August, 1960, cannot be relevant to applicant's suspension.

Also his suspension did not affect the amount of gratuity payable to the dependants of applicant.

(2) *On contention* (*d*) (supra) :

This matter was already covered by holding, in the Ruling previously given, (*supra*) that the possibility of the heirs claiming damages, which an applicant could have claimed himself, does not create an interest of their own sufficient to entitle them to continue a recourse, after the death of an applicant.

(3) *On the substance :*

As no legitimate interest of the heirs of the deceased applicant has been in fact prejudicially affected through the suspension, the subject-matter of this recourse, these proceedings are abated by his death. No question of their amendment arises in the circumstances.

Recourse dismissed.

Cases referred to :

Decision 574 *of* 1936 *of the Greek Council of State* (Decs. Coun. of St. 1936 vol. A 11, pp. 273, 463).;

Decision 93 *of* 1949 *of the Greek Council of State* (Decs. Coun. of St. 1949 vol. A, p. 199) ;

Decision 1883 *of* 1950 *of the Greek Council of State* (Decs. Coun. of St. 1950 vol. B, p. 348) ;

Decision 1911 *of* 1950 *of the Greek Council of State* (Decs. Coun. of St. 1950, vol. B, p. 366) ;

Decision 560 *of* 1949 *of the Greek Council of State* (Decs. Coun. of St. 1949 vol. B, p. 64) ;

Decision 1031 *of* 1949 *of the Greek Council of State* (Decs. Coun. of St. 1949, vol. B, p. 791) ;

Decision 31 *of* 1957 *of the Greek Council of State* (Decs. Coun. of St. 1957, vol. A, p. 40) ;

Decision 104 *of* 1957 *of the Greek Council of State* (Decs. Coun. of St. 1957, vol. A, p. 122) ;

Decision 139 *of* 1957 *of the Greek Council of State* (Decs. Coun. of St. 1957, vol. A, p. 161) ;

Decision 232 *of* 1957 *of the Greek Council of State* (Decs. Coun. of St. 1957, vol. A, p. 247) ;

Decision 627 *of* 1956 *of the Greek Council of State* (Decs. Coun. of St. 1956, vol. A, p. 761).

Recourse.

Recourse for a declaration that the suspension of applicant by way of disciplinary measure, from the post of elementary school-teacher, for a year as from the 8th January, 1963, is null and void.

L. N. Clerides, for the applicant.

G. Tornaritis, for the respondent.

Cur. adr. vult.

The following ruling was delivered on the 3rd October, 1964, by :

TRIANTAFYLLIDES, J.: The applicant in this case applied, by filing this recourse on the 30th January, 1963, for a declaration that his disciplinary suspension from the post of elementary school-teacher, for a year, from the 8th January, 1963, was null and void as having been decided upon contrary to the rules of natural justice and in abuse of powers. The respondent joined issue by filing an Opposition on the 3rd April, 1963.

The case was pending at the Presentation stage, when on the 23rd June, 1963, applicant died. This was stated to, and recorded by, a rapporteur, when the case came up for mention on the 7th December, 1963.

At the outset of the hearing on the 10th September, 1964, counsel for applicant sought to have the title of the case amended by substituting in the place of applicant the administrators of his estate, his father and mother. Counsel for respondent objected.

In view of the question of the amendment being a possible procedural corollary of the substantive issue as to whether or not this recourse can proceed, in spite of the intervening death of the applicant, it was directed that the said question of the amendment should be postponed, pending the determination of the aforesaid issue concerning the further fate of these proceedings.

On this issue of the consequences of the death of an applicant for the fate of his pending recourse, under Article 146 of the Constitution, there does not exist, as far as I am aware, any authoritative pronouncement in the Cyprus jurisprudence.

The position cannot be said to be necessarily the same as when the death supervenes of a plaintiff in a civil action, due to the essential and fundamental differences between private law civil proceedings and public law administrative proceedings.

Under rule 18 of the Supreme Constitutional Court Rules—which are still applicable to proceedings such as the present by virtue of sections 11 and 17 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64)—it is provided that the Civil Procedure Rules " shall apply, *mutatis mutandis*, to all proceedings before the court so far as circumstances permit or unless other provision has

been made by these Rules or unless the court or any judge otherwise directs ". The case, however, under examination is such that circumstances *i.e.* its nature in the realm of public law proceedings for annulment, do not permit the automatic application of the Civil Procedure Rules. As Fleiner states in his textbook on Administrative Law (8th ed. translated by Stymphaliades, p. 240) " The procedure before the administrative courts has been formulated, as regards its basic characteristics, by imitating the civil procedure, but for the rest it has been fitted to the special purposes of proceedings on administrative issues ". In any case, applying the relevant provisions of the Civil Procedure Rules would not resolve the problem that has arisen in this case because such provisions would have applied to the procedural only, and not the substantive as well, aspect of the matter.

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).

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 my opinion in view of the aforesaid requirement of interest under Article 146.2, it follows that the consequences of the death of an applicant in a pending recourse, such as this, should be as follows : Where in spite of the death there exists, in relation to the subject-matter of such recourse, an existing legitimate interest, vested in the heirs of applicant as their own, which has been directly and adversely affected, then the recourse may be continued by the heirs. If this is not so, then the recourse is abated.

Much guidance has been derived, in reaching this conclusion, from the decisions of the Council of State in Greece in similar cases. The annulment jurisdiction of the Greek Council of State appears to have been used as a prototype in creating the jurisdiction under Article 146, in the same way as the corresponding competence of the Conseil d' Etat in France was adopted as the model when the Greek Council of State was to be created in 1928. In this respect, it is useful to compare Article 146 with the relevant provisions of Greek legislation (particularly Law 3713/1928).

The effect of the aforesaid decisions has been summarized in the officially issued " Conclusions from the Jurisprudence of the Council of State " (1929–1959), at p. 273, and has been explained in " The Recourse for Annulment before the Council of State " by Tsatsos, 2nd ed. p. 238, para. 186.

The principle evolved there may be stated as follows :—

On the death of an applicant a pending recourse is continued by his heirs, so long as they possess an interest of their own in continuing the recourse ; if, however, the subject-matter of the recourse is personal to the deceased applicant only *i.e. jus personalissimum*, so that the successful outcome of the proceedings would lead the administration to a course of action concerning a right personally attached to the applicant, without any legitimate interest of his heirs being involved, or where there does not come forward any person seeking to continue the recourse, then it is abated.

Some of the relevant decisions of the Greek Council of State may be usefully referred to :—

First, decision 574/36 ; (Decs. Counc. of St. 1936 vol. A II, p. 463) ; it was specifically relied upon by counsel for applicant. From its report it appears that the Council of State proceeded to determine a recourse against the termination of the services of an applicant, after the death of the applicant. This decision has been relied upon in this case as laying down the principle that the death of an applicant never prevents the determination of a recourse such as the present. It has, though, to be read as part of the whole jurisprudence of the Council of State on the relevant issue. If this is done then it would appear that the principle followed in Greece is not so wide but it is subject to the requirement for the existence in the heirs of an interest of their own arising out of the subject-matter of the recourse. Decision 574/36 would fit within such principle because there

the applicant was the head of a family and presumably his heirs had an interest of their own in the validity of his dismissal in view of pension being otherwise payable to them, under Greek Law. It is significant that the aforesaid " Conclusions from Decisions of the Council of State ", mention decision 574/36 at p. 273, in support of the principle that a recourse can be continued by the heirs of the applicant if they have an interest of their own in the subject-matter of such recourse.

A decision of the Greek Council of State which should help to see decision 574/36 in its proper light is decision 93/49. (Decs. Coun. of St. 1949, vol. A, p. 199). There the applicant, who died while the recourse was pending, was challenging his non-promotion to a certain post and the Council of State held that the recourse had been abated because " the possible promotion of applicant, after the annulment of the omission complained of, not being retrospective, would carry no benefit for his lawful heirs so as to vest in them a legitimate interest to continue the recourse in the name of applicant ".

It is also of assistance, in this respect to refer to decision 1883/1950 (Decs. Coun. of St. 1950, vol. B, p. 348) where, the applicant, being a municipal employee and having complained by recourse to the Council of State that there had been an omission to promote him retrospectively, died while the recourse was pending ; it was held that it could not be continued after his death, because he only left as an heir a married sister who was *not* entitled to pension. The same line was taken by the Council of State in decision 1911/1950 (Decs. Coun. of St. 1950, vol. B, p. 366). It was held there that the recourse could not be continued as nobody had appeared " having a direct legitimate and personal interest in continuing the present recourse ". Reference may likewise be made to cases 560/1949 and 1031/1949 (Decs. Coun. of St. 1949 vol. B, p. 64 and p. 791). On the other hand, the existence of a legitimate interest in the heirs was adopted, expressly or impliedly, as the reason for the continuation of the recourse by the heirs, notwithstanding the death of applicant, in decisions of the Council of State 31/57, 104/57, 139/57, 232/57 (Decs. Coun. of St. 1957 vol. A, pp. 40, 122, 161, 247).

Lastly, reference may be made to decision 627/56 (Decs. Coun. of St. 1956 vol. A, p. 761) in which the facts are similar to the circumstances of the present case, in that a public officer, having been dismissed for disciplinary reasons

as a result of a conviction and having made a recourse to the Council of State against such dismissal, died while it was pending, but his recourse was continued by his heirs, in view of its proprietary context.

Counsel for applicant, in this case, has tried to base his allegation, that a proprietary interest of their own has vested in the heirs of the deceased for the continuation of the recourse, on para. 6 of Article 146 which gives the right to a successful applicant to claim damages as a result of a judgment under para. 4 of the same Article. He put forward the argument that the expectation of claiming damages, by stepping into the shoes of applicant, as a result of the possible successful outcome of the recourse was a sufficient interest of the heirs in order to continue the recourse. In my opinion, this is not correct. First of all, para. 6 itself of Article 146 seems to imply by its very terms the existence in life of the person in respect to whom restitution is to be made and damages appear to be only an eventual mode of restitution. Secondly, in any case, this para. 6 is not a *sui generis* provision unique in Cyprus. In Greece, also, after a successful recourse to the Council of State, it is possible to claim restitution including damages before the civil courts—*vide* Kyriakopoulos on "The Greek Administrative Law", 4th ed., vol. III, p. 155—and yet as it has been seen from the review of the afore-mentioned decisions of the Greek Council of State, the mere existence of a recourse which, if successful, could always give rise to an action for damages, has apparently not been considered as providing sufficient legitimate interest for the heirs to continue a recourse, without an interest of the heirs themselves in the subject-matter of the recourse. Otherwise in all instances the Council of State would have invariably held that the heirs could have continued the recourse because of their eventual expectation to claim damages by stepping into the shoes of applicant ; it is obvious that this view was not adopted by the Council of State of Greece.

There now remains, in the light of all the foregoing, to decide whether the heirs of applicant in the case have a legitimate interest of their own which has been directly and adversely affected by his suspension, so that they may be entitled to continue this recourse. On this point I would like to hear counsel further. It is *e.g* possible that through the suspension of applicant his heirs have been deprived of some benefit by way of pension, gratuity or other grant to which they would have been entitled under the relevant legislation applicable to applicant at the time of his death.

The following judgment was delivered on the 18th December, 1964 by :—

TRIANTAFYLLIDES, J.: The applicant in this case has applied for a declaration that his suspension, by way of disciplinary measure, from the post of elementary school-teacher, for a year as from the 8th January, 1963, is null and void. He died, while this recourse was pending, on the 23rd June, 1963. His heirs, and also dependants, are his parents, a brother and two sisters.

When this case came up for hearing counsel for applicant sought to have the title of the proceedings amended by substituting in the place of applicant the administrators of his estate, his father and mother.

In view of the fact that such amendment would be only a possible procedural corollary of the determination of the substantive issue as to whether or not this recourse could proceed to hearing in spite of the intervening death of applicant, it was directed that the question of the amendment should be shelved pending the determination of such substantive issue.

On the 3rd October, 1964, I gave a Ruling on the above issue (*vide ante*, at p. 401). I adopt as part of this judgment such Ruling and I need not repeat all its contents. I might only state that, as held therein, the relevant principle applicable in case of the death of an applicant during a pending recourse is as follows :—

> " When in spite of the death there exists, in relation to the subject-matter of such recourse, an existing legitimate interest, vested in the heirs of applicant as their own, which has been directly and adversely affected, then the recourse may be continued by the heirs. If this is not so, then the recourse is abated."

I reached the above conclusion on the basis of the requirements of Article 146.2 of the Constitution, in relation to legitimate interest, and in the light of relevant jurisprudence in Greece (see in this respect " Conclusions from the Jurisprudence of the Council of State " 1929–1959, p. 273 ; Tsatsos on " The Recourse for Annulment before the Council of State " 2nd ed. p. 238, para. 186 ; and Decisions of the Greek Council of State 574/1936, 93/1949, 1883/1950, 1911/1950, 560/1949, 1031/1949, 31/1957, 104/1957, 139/1957, 232/1957 and 627/1956).

It was held further, in the aforesaid Ruling, that the expectation of claiming damages, after the possibly successful outcome of a recourse, by stepping into the shoes of a deceased applicant, is not a sufficient interest of the heirs entitling them to continue such recourse. They must have an interest of their own.

The Ruling concluded as follows :—

> " There now remains, in the light of all the foregoing, to decide whether the heirs of applicant in the case have a legitimate interest of their own which has been directly and adversely affected by his suspension, so that they may be entitled to continue this recourse. On this point I would like to hear counsel further. It is *e.g.* possible that through the suspension of applicant his heirs have been deprived of some benefit by way of pension, gratuity or other grant to which they would have been entitled under the relevant legislation applicable to applicant at the time of his death."

At the resumed hearing, counsel for applicant contended that the heirs could continue the recourse in view of the following :—

(*a*) Applicant's suspension may have been treated as a break in service, for the purposes of section 50 of the Elementary Education Law, Cap. 166, in such a manner as to deprive the dependants of applicant of the full gratuity.

(*b*) The dependants were granted by the Greek Communal Chamber a gratuity of £236, under section 62 (1) of the same Law, and his death while he was suspended may have caused the Chamber to grant only this gratuity, rather than the full amount of commuted pension gratuity or a year's salary which otherwise would have been granted.

(*c*) The respondent did not pay the dependants any gratuity in respect of applicant's service before 1960.

(*d*) If the suspension were to be annulled, the dependants would be entitled to claim the salaries which the applicant would have claimed in such a case, if alive, in respect of the months when he had been treated as suspended.

It is convenient, at this stage, to refer to certain exhibits which relate to the points made by counsel for applicant.

On the 20th January, 1964, the Director of the Education Office of the Greek Communal Chamber informed the

father of applicant by letter (*exhibit* 1), that the Committee of Administration of the Chamber had decided to pay to the dependants of the deceased applicant such part of the gratuity, payable on his death, as was proportionate to his service under the Chamber.

On the 16th July, 1964, counsel for applicant wrote to the Education Office (*exhibit* 3) seeking to know on what ground the amount which was paid to the dependants had been calculated, because he was instructed that a year's emoluments should have been paid by way of gratuity and not a half year's salary. The annual emoluments of applicant at the time of his demise were £526 (and the dependants received £236).

The Director of the Education Office replied on the 3rd August, 1964 (*exhibit* 2) stating that the amount paid was calculated in due proportion to the length of service of the deceased applicant under the Chamber *viz.* from the 16th August, 1960 to the 23rd June, 1963.

It appears from the above that, in calculating the length of service of applicant when deciding to pay him a gratuity the period during which applicant was suspended *i.e.* from the 8th January, 1963, until his death, not only was not treated as a break of service, under section 50 of Cap. 166, so as to prevent the payment of gratuity, but on the contrary, it was treated as part of the service of applicant under the Greek Communal Chamber. So, contention (*a*) of his counsel, as above, is not borne out.

Coming to contention (*b*), there is nothing to show that the respondent decided, because of the suspension of applicant, to pay the dependants anything less than what they would have been otherwise entitled to.

Counsel for respondent has stated that any gratuity due was paid in full. In my opinion the very fact that the period of service under the Chamber, in respect of which the gratuity was paid, was taken to extend down to the date of death *i.e.* the 23rd June, 1963, including thus in such service the period of suspension as from the 8th June, 1963, establishes that the said suspension was not taken into account as a factor reducing the gratuity payable to the dependants. Furthermore, had the contrary been true, the Director of the Education Office, in his letter of the 3rd August, 1964, (*exhibit* 2), written in answer to the specific enquiry of counsel for applicant, on the 16th July, 1964 (*exhibit* 3), concerning the basis of calculation of the actual amount of the gratuity, would no doubt have informed counsel for

applicant accordingly. On the contrary he wrote that the period of service taken into account was the whole service of the applicant down to the 23rd June, 1963.

Coming then to contention (*c*) of counsel for applicant, it is not disputed that the dependants were not paid any gratuity in respect of the service of applicant prior to 1960, *i.e.* before the coming into existence of the Greek Communal Chamber on the 16th August, 1960 ; such a course, however, cannot reasonably be taken to have any connection with the administrative act, the subject-matter for this recourse, and it must be presumed to have been based on the provisions of Article 192 of the Constitution, particularly para. 5 thereof, and, therefore, it cannot be said that the heirs of applicant derive therefrom any interest of their own to continue the recourse against an irrelevant matter such as his suspension.

There is nothing to prevent an application to the authorities for payment of any balance of the gratuity, in respect of the service of applicant under the previous British Colonial Government, and I do trust that, in view of what counsel for respondent has stated, the Greek Communal Chamber will readily agree to any adjustment, if any, that may be found necessary when the respective liabilities under Article 192.5, of the Republic and the Greek Communal Chamber, are finally ascertained.

It may be stated on this point that should it turn out that the Greek Communal Chamber has, in any way, miscalculated what was due by it to the dependants, by way of its share of the gratuity, and refuses to make the necessary adjustment, or should the authorities of the Republic unjustifiably refuse to pay its share of such gratuity, the dependants of applicant might possibly seek redress by appropriate proceedings, but they cannot pursue such redress in these proceedings ; anyhow, I am not prejudging now any of these matters.

To sum up my views on the first three contentions of counsel for applicant, I say that I am satisfied that the suspension of applicant did not prejudicially affect any interest of the heirs of applicant, so as to entitle them to continue this recourse because :—

(*a*) it was not treated as a break of service under section 50 of Cap. 166 ;

(*b*) it did not prevent the service of applicant, down to the time of his death, from being taken into account for the purposes of granting his dependants a gratuity ;

(*c*) the non-granting of a gratuity in respect of any service before the 16th August, 1960, cannot be relevant to applicant's suspension.

I am also satisfied that his suspension did not affect the amount of gratuity payable to the dependants of applicant. This is shown, further, by the following arithmetical consideration.

It is common ground that applicant was a permanent teacher since 1957 ; therefore, out of the two possible measures of gratuity, under section 62 (1) of Cap. 166, the most favourable was his annual pensionable emoluments and not a commuted pension, as his years of service were few. In respect of about half of his service (16/8/60–23/6/63) a gratuity of £236 was paid to his dependants and his annual emoluments were at the time of his death £526. So it is clear that the Greek Communal Chamber took as a basis, in calculating the gratuity payable, the most favourable course under section 62 (1).

There remains now to deal with contention (*d*) of counsel for applicant, *i.e.* that the dependants of applicant, if this recourse were to nullify his suspension, would be entitled to claim, through his estate, the salaries between the 8th January, 1963 and the 23rd June, 1963, to which applicant would have been entitled if he were alive himself.

This matter was already covered by holding, in the Ruling previously given, that the possibility of the heirs claiming damages, which an applicant could have claimed himself, does not create an interest of their own sufficient to entitle them to continue a recourse, after the death of an applicant.

Furthermore, it must be borne in mind that the suspension of applicant, like his appointment to which it is intrincically related, is an administrative act *in personam* and as such it has ceased to have effect when applicant died. As the heirs of applicant have no other interest of their own entitling them to continue the recourse, the proceedings have been deprived of their subject-matter and it is not possible to continue them on behalf, in effect, of the estate of applicant, so as to enable such estate to seek redress by way of claiming salaries or other damages ; in the circumstances the recourse is abated. Such a conclusion has actually been reached by the Greek Council of State in Decisions 93/1949, 1031/1949, 1883/1950 and 1911/1950. In all these cases it was found that on the death of the applicant the recourse was abated, as it was deprived of its subject-matter and the heirs had no legitimate interest of their own to continue it.

In this respect it may be useful to refer to the following passage by Professor Stasinopoulos, a member himself of the Greek Council of State, in "Law of Administrative Acts" (1951) p. 375 under the title of 'Ceasing of effect of administrative acts' and subtitle 'Disappearance of object of administrative act':—

«Ἡ ἔκλειψις τοῦ ἀντικειμένου τῆς πράξεως ἐπέρχεται εἴτε διὰ τοῦ θανάτου τοῦ προσώπου, εἰς ὃ ἀφεώρα, εἴτε διὰ τῆς ἐκλείψεως τοῦ πράγματος, τὸ ὁποῖον ὡς ἐκ τῆς φύσεώς της εἶναι προωρισμένη νὰ παρακολουθῇ ἡ πρᾶξις. Εἰς τὴν πρώτην περίπτωσιν, ὑπάγονται αἱ προσωποπαγεῖς πράξεις... Προσωποπαγεῖς πράξεις εἶναι οἱ διορισμοὶ δημοσίων ὑπαλλήλων... ὡς καὶ γενικῶς πᾶσα πρᾶξις, διὰ τὴν ἔκδοσιν τῆς ὁποίας ἐλήφθησαν ὑπ' ὄψιν στοιχεῖα καὶ προϋποθέσεις συνδεδεμέναι πρὸς τὸ πρόσωπον, ἐπ' ὀνόματι τοῦ ὁποίου ἐξεδόθη. Διὰ τοῦ θανάτου τοῦ προσώπου τούτου, λήγει ἡ ἰσχὺς τῆς πράξεως, τὰ δ' ἔννομα ἀποτελέσματα αὐτῆς δὲν εἶναι δυνατὸν νὰ συνεχισθῶσιν ἔναντι τῶν εἰδικῶν ἢ καθολικῶν διαδόχων τοῦ προσώπου τούτου. Ἡ λῆξις ὅμως αὕτη δὲν κωλύει τὴν περαιτέρω παραγωγὴν νέων νομικῶν συνεπειῶν, αἵτινες εἶναι δυνατὸν νὰ προκύψωσιν ἐκ τῆς μέχρι τοῦδε ἰσχύος τῆς πράξεως καὶ τῶν ἕνεκα ταύτης δημιουργηθεισῶν καταστάσεων καὶ σχέσεων, ὡς τὸ δικαίωμα ἑτέρων προσώπων συγγενῶν τοῦ ὑπαλλήλου, πρὸς ἀπονομὴν συντάξεως, ἀπονομὴν βοηθήματος κ.λ.π. Ἀλλ' αἱ νομικαὶ αὗται συνέπειαι δὲν ἀποτελοῦν συνέχισιν τῆς ἰσχύος τῆς ληξάσης πράγματι πράξεως, ἀλλὰ νέας σχέσεις, αἵτινες ἐπὶ ἰδίων διατάξεων τοῦ νόμου καὶ ἐπὶ ἰδίων ἐνδεχομένως αὐτοτελῶν διοικητικῶν πράξεων στηρίζονται.»

("The disappearance of the object of the act supervenes either due to the death of the person, to whom it relates, or due to the disappearance of the thing, to which, because of its nature, it is destined to be attached. In the first category belong the administrative acts *in personam* .... Acts in personam are the appointments of public officers ... and in general any act, in the making of which have been taken into account facts and considerations related to the person in connection with whom it has been made. By the death of such person, the effect of the act ceases, and the legal effect thereof cannot be continued against the legatees or residual heirs of the said person. Such ceasing of effect however does not prevent the production further of new legal consequences, which may arise through the till then effect of the act and the situations or relationships

created by it, such as the right of other persons related to a public officer to receive pension or gratuity. But such legal consequences do not constitute a continuation of the effect of the in fact terminated act, but new legal relationships, based on specific legal provisions and possibly on specific self-contained administrative acts)."

In the light of all the above reasons I have reached the conclusion that, as no legitimate interest of the heirs of the deceased applicant has been in fact prejudicially affected through the suspension, the subject-matter of this recourse, these proceedings are abated by his death. No question of their amendment arises in the circumstances.

As regards costs, I think it is proper to make no order in the matter of costs, in view of all the circumstances of this Case and the novelty, in Cyprus, of the issues raised.

Recourse fails and is dismissed accordingly. No order as to costs.