IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE BAR ASSOCIATION OF NICOSIA AND THE CHAIRMAN OF THE COMMITTEE AND THE COMMITTEE OF THE BAR ASSOCIATION OF NICOSIA,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH THE COUNCIL OF MINISTERS AND OTHERS,

Respondents.

(*Case No.* 9/75).

Provisional Order—Rule 13 *of the Supreme Constitutional Court Rules,* 1962—*Recourse against payment of "thirteenth salary" to public officers—Application for provisional order stopping such payment pending determination of the recourse—Principles governing the grant or not of a provisional order*—Inter alia, *whether there is a serious question to be tried at the hearing of the recourse and probability that one at least of the applicants is entitled to relief—Applicants not possessing the "lawful interest" required by paras.* 1 *and* 2 *of Article* 146 *of the Constitution and therefore none of them has locus standi in the proceeding—Application refused on this ground.*

Legal persons—Recourse for annulment—When legal persons have locus standi to apply for annulment.

Along with a recourse for a declaration that the payment of "thirteenth salary" to public officers was illegal the applicants filed an application for a provisional order stopping payment of such salary pending the hearing and final determination of the recourse. The application for the provisional order was based on r. 13 of the Supreme Constitutional Court Rules, 1962.

Dismissing the application the Court held:

1. Unless on the facts before me I am satisfied that there is a serious question to be tried at the hearing of the substantive application and that there is a probability that one at least of the applicants is entitled to relief I

must refuse to grant an injunction. (See *Preston* v. *Luck* [1884] 27 Ch. D. 497).

2. Now for an application under Article 146 to succeed the applicant, or, if more than one, at least one of them, must possess the "lawful interest" required by paras. 1 and 2 of Article 146 of the Constitution in the relief claimed thereby. None of the applicants has such an interest and therefore none of them has locus standi in the proceedings. The application must, therefore, be dismissed. (See Conclusions from the Case-law of the Greek Council of State, pp. 261, 262 last and first paragraphs respectively; Odent on Contentieux Administratif, 2nd edn. pp. 1285, 1286).

Application dismissed.

Cases referred to:

Preston v. *Luck* [1884] 27 Ch. D. 497, at pp. 505-506.

Application for a provisional order.

Application for a provisional order to stop payment to public officers of a "thirteenth salary" for the year 1974 pending the hearing and final determination of a recourse whereby the applicants seek a declaration that such payment is illegal.

F. Kyriakides, for the applicants.

Cur. adv. vult.

The following judgment was delivered by:-

STAVRINIDES, J.: This is an *ex parte* application for a provisional order to stop payment to public officers of a "thirteenth salary" for the year 1974 pending the hearing and final determination of a substantive application whereby, putting it shortly, the applicants seek a declaration that such payment would be illegal.

The grant of a provisional order in an application to this Court under Article 146 of the Constitution is regulated by r. 13 of the Supreme Constitutional Court Rules, 1962, which provides that such an order may be made "if the justice of the case so requires". In *Preston* v. *Luck* [1884] 27 Ch. D. 497, decided at a time when the Supreme Court of Judicature Act, 1873, was in force, s. 25 (8) of which provided that an injunction

might be granted by an interlocutory order ..... "in all cases in which it appeared to the Court to be just and convenient that such order should be made", Cotton, L.J., said at pp. 505, 506.:

> " Of course, in order to entitle the plaintiffs to an interlocutory injunction, though the Court is not called upon to decide finally on the right of the parties, it is necessary that the Court should be satisfied that there is a serious question to be tried at the hearing, and that on the facts before it there is a probability that the plaintiffs are entitled to relief".

Incidentally, this passage seems to be the ultimate source of the proviso to s. 32 (1) of the Courts of Justice Law, 1960, dealing with the grant of injunctions in civil actions. In my judgment no distinction of substance may be drawn between the expression "if the justice of the case so requires" and the expression "in all cases in which it appears to the Court to be just or convenient". Therefore *Preston's* case is relevant to the determination of the instant application as showing that unless, on the facts before me, I am satisfied that there is a serious question to be tried at the hearing of the substantive application and that there is a probability that one at least of the applicants is entitled to relief I must refuse to grant an injunction.

Now for an application under Article 146 to succeed the applicant, or, if more than one, at least one of them, must possess the "lawful interest" required by paragraphs 1 and 2 of Article 146 of the Constitution in the relief claimed thereby. The question then is: Do the present applicants, or does at least one of them, possess such interest? In support of the affirmative counsel for the applicants cited to me Conclusions from the Case-Law of the Greek Council of State, pp. 261, 262, last and first paragraphs respectively, and Tsatsos's Application to the Greek Council of State for Annulment, pp. 62 and 63, last and first paragraphs respectively. The result of the Greek cases is thus summed up in the passage quoted from pp. 261, 262 of the former book:

> " Legal persons have locus standi to apply for annulment not only as regards acts concerning them personal y but also as regards acts damaging the interests of their members, to the extent that the protection of those interests falls within their objects. The damaged interests of the members

must concern the totality or a general category of them and not some members individually. At any rate it has been held that an association having among its objects the protection of the vested interests of its members has locus standi to ask for annulment of an act damaging the interests of some of them".

Odent in his Contentieux Administratif, 2nd ed., pp. 1285, 1286, states:

" However, for a body of persons to be able, by an application for excess of power, to defend the collective interest of all or some of its members two conditions must be satisfied.

In the first place the decision attacked must have injured the members of the body in the capacity by reason of which that body unites them .....

In the second place a body cannot act in place and stead of all or some of its members with a view to obtaining for them certain individual advantages .....".

Accepting, as I do, those passages as accurately describing the requirement of lawful interest contained in paragraphs 1 and 2 of Article 146, I conclude that none of the applicants has such an interest, and therefore none of them has locus standi in these proceedings. The Rules of the Local Bar Association are not before me, but even if they had been and they contained a provision purporting to arrogate to it a general "responsibility" for "legality"—one that, as far as I know, not even an ombudsman has—the result would have been the same; for it cannot be open to any persons acting as a body—any more than to persons acting independently—by their own unauthorized actions to invest themselves with such "responsibility". If this were possible then proceedings of this kind would degenerate into actiones populares that would be open to abuse and likely to cause obstruction to the functioning of the administration.

For these reasons the instant application must be, and hereby is, dismissed.

Application dismissed.