

1982 April 27

[HADJIANASTASSIOU, A. LOIZOU, DEMETRIADES, LORIS,
STYLIANIDES, PIKIS, JJ.]

MODESTOS PITSILLOS,

Appellant.

v.

THE CYPRUS BROADCASTING CORPORATION,

Respondents.

(Revisional Jurisdiction Appeal No. 253).

Broadcasting—Organization by respondents of “meet the Press” series of television programs for political party leaders—“Justice Party” excluded from the program—Nothing to suggest that the organization of the “Justice Party” extended beyond that of the Social Club “Justice Party” registered under the provisions of the Clubs (Registration) Law, Cap. 112—Respondents rightly excluded the “Justice Party” from the above program on the ground that it did not qualify as a political party. 5

Parties—Political parties—Attributes of a political party.

In 1969 a club was registered, pursuant to the provisions of the Clubs (Registration) Law, Cap. 112 under the name of “Justice Party” and the registration was renewed thereafter in accordance with section 10 of the Law. The functioning of the club was regulated by the rules embodied in the Constitution of “Justice Party” and the association entitled “Justice Party” was largely politically motivated. The appellant was the leader of this Association and in 1970 he was a candidate in the parliamentary elections for the Nicosia District and polled 1250 votes, a negligible percentage of the vote cast. The seat was, apparently, contested in the name of and in furtherance to the political objectives of the Association. 10 15 20

On March 1, 1981, respondents announced their decision to organize a program whereby the leaders or representatives of political parties would be invited to meet the press and

5 expound their views over the broadcasting network, in view
of the impending parliamentary elections of 1981. As neither
the "Justice Party" nor its leader, the appellant, were invited
to take part in the "Meet the Press" series of television programs,
the appellant addressed a telegram to the respondents on March
3, 1981, complaining about his exclusion and demanding at
the same time, that an opportunity be given to him to canvass
his views over the media, given his intention to stand as a candi-
10 date at the coming elections. The respondents refused to reply
to the appellant and he challenged the refusal by means of a
recourse contending, inter alia, that his exclusion from the
"meet the press" series of television programs constituted a
contravention of Article 28 of the Constitution as well as section
19(3) of the Cyprus Broadcasting Corporation Law, Cap. 300A.

15 Amongst the criteria, on the basis of which leaders of other
political parties were invited to participate in the "meet the press"
programs was representation in the House of Representatives
and participation in meetings of the National Council; and
neither of these criteria were satisfied by appellant or the "Justice
20 Party". The trial Judge dismissed the recourse having held
that the exclusion of applicant did not offend Article 28 of
the Constitution. Hence this appeal.

25 *Held, (after identifying some of the salient features without
which no association or organization can qualify as a political
party—vide pp 217–8 post) that there is nothing to suggest that
the organization of the "Justice Party" extended beyond that of
the social club "Justice Party"; that to claim political status
from the springboard of a club registered under the provisions
of Cap. 112, would be tantamount to ignoring the realities
30 of political parties; that there is a total absence of any indication
that the "Justice Party" evolved any concrete policies relevant
to the problems of our times or the issues that faced the electorate
in the 1981 elections; that participation by the leader of a group
in a past election, does not render the group a contestant of
35 political power; that the respondents were right in not extending
an invitation to the "Justice Party" to participate in the "Meet
the Press" series, on the ground that they did not qualify as
a political party; accordingly the appeal must be dismissed.*

Appeal dismissed.

Observations on the legitimacy of the interest of the applicant to raise the present proceedings, having regard to the provisions of Article 146.2 of the Constitution and in view of the absence of any allegation that the proceedings are raised by the applicant, either on behalf of the "Justice Party" or in furtherance to a decision of the executive organ of the "Justice Party", the central committee. 5

Cases referred to:

- Kyriakides v. Republic*, 1 R.S.C.C. 66;
Yiannaki v. Republic (1965) 3 C.L.R. 561 at p. 567; 10
Chrysostomides v. Greek Communal Chamber, 1964 C.L.R. 397 at p. 402;
Demetriou v. Republic, 1 R.S.C.C. 99;
Bar Association of Nicosia v. The Republic (1975) 3 C.L.R. 24;
Cyprus Police Association and Others v. Republic (1974) 3 C.L.R. 152. 15

Appeal.

Appeal against the judgment* of a Judge of the Supreme Court of Cyprus (Triantafyllides, P.) given on the 21st May, 1981 (Revisional Jurisdiction Case No. 134/81) whereby appellant's recourse for a declaration that the refusal of the respondent to reply to his cable dated 3.3.1981 and to include him, as a political leader, in the "Meet the Press" Series of television programs contravened Articles 29 and 28 of the Constitution was dismissed. 20 25

G. Triantafyllides, for the appellant.

P. Polyviou, for the respondent.

Cur. adv. vult.

HADJIANASTASSIOU J.: The judgment of the Court will be delivered by Pikiis J. 30

PIKIS J.: In 1969 a club was registered, pursuant to the provisions of the Clubs (Registration) Law, Cap. 112, under the name of "Justice Party"; registration, it seems, was renewed thereafter in accordance with the provisions of s. 10 of the law. The functioning of the club was regulated by the rules embodied in the constitution of "Justice Party". Whether this organisation, "Justice Party", had any existence separate and independent from the club, was never made clear; the indications 35

* Reported in (1981) 3 C.L.R. 614.

are rather that it did not, an impression strengthened by its description as a registered party in the summary of facts adumbrated in the body of the recourse. Cyprus law does not purport to regulate the functioning of political parties nor does it provide for their registration. Judging from its constitution the association entitled "Justice Party" was largely politically motivated.

The appellant, Mr. Modestos Pitsillos, applicant in the proceedings at first instance, was from the outset the leader of the organisation, a position he retains still and proclaims with vigour. In 1970, he was a candidate in the parliamentary elections for the Nicosia district and polled 1250 votes, a negligible percentage of the vote cast. Apparently, the seat was contested in the name of and in furtherance to the political objectives of the association.

On 1st March, 1981, the respondents announced their decision to organise a programme whereby the leaders or representatives of political parties would be invited to meet the press and expound their views over the broadcasting network, designed to elicit their standpoint on various subjects in view of the impending parliamentary elections of 1981. Evidently, the programme was organised in order to help enlighten the public on the views of political parties competing for legislative power, on the one hand, and offer the political parties a sounding board for the projection of their views, on the other. Neither the "Justice Party" nor its leader were invited to take part in the "Meet the Press" series. Mr. Pitsillos objected to his exclusion and lodged a complaint with the respondents, inviting them to redress the injustice. On 3.3.1981, he addressed a telegram, complaining about his exclusion demanding, at the same time, that an opportunity be given to him to canvass his views over the media, given his intention, allegedly entertained at the time, to stand as a candidate at the coming elections. The telegram was addressed in a personal capacity but under his name his position in the "Justice Party" is specified.

The respondents omitted or refused to reply to the appellant. Soon afterwards, on 7.4.1981, this recourse was filed, whereby both the omission to reply as well as the decision itself were challenged.

By the recourse two reliefs were sought:

(a) A declaration that the omission of the respondents

to reply to his telegram was unconstitutional and in excess of their power. It emerges from the grounds of law set out in support of the application that the first prayer is grounded on the provisions of Article 29.1 of the Constitution, casting a duty on the authorities to deal with complaints and requests of the public, as expeditiously as possible, and reply the latest within 30 days. 5

- (b) A declaration was asked for, that the decision of the respondents to exclude the applicant from the television programme "Meet the Press", is illegal, unconstitutional and an act taken in excess of their powers. It is founded, judging from the exposition of the grounds of law, cited in support, on the provisions of Article 28 of the Constitution, guaranteeing equality of treatment before the law, the administration and justice. 10 15

The respondents opposed the application and refuted allegations of discriminatory treatment. The omission to reply was attributed to the absence of a forwarding address in the telegram, whereas the substantive decision was justified by reference to the criteria that respondents evolved for the identification of those entitled to participate in the programme. 20

The case was expeditiously dealt with by the learned President of the Court, Mr. Justice Triantafyllides. After eliciting the facts, he proceeded to deliver his judgment on 21.5.1981, that is, shortly before the 1981 elections for the return of the country's deputies to the House of Representatives. The factual background to the case is revealed, inter alia, in two affidavits sworn, one by Mr. Christofides, the general manager of the respondents, and the other by the applicant. Mr. Christofides lists in his deposition the criteria adopted by the respondents for deciding which parties should be invited to participate in the programme, centering primarily, as one may gather, on the public image of the contestants for the elections. These were:- 25 30 35

1. Representation in the House of Representatives.
2. The holding of consultations with the President of the Republic and/or attendance of meetings of the National Council at the latter's invitation.

3. The activities of the parties, examined from a national as well as a regional perspective.
4. Public response to the parties.

5 The trial court upheld the decision of the respondents and dismissed the recourse. That aspect of the recourse directed against the omission to reply, was found to be unsustainable in view of the challenge made to the substantive decision and the absence of any suggestion or indication that as a result of the omission the applicant suffered any damage cognizable under Article 146.6 of the Constitution. (See *Kyriakides* 10 *v. The Republic*, 1 R.S.C.C. 66). It was held that for all practical purposes, the complaint revolving round the application of the provisions of Article 29, merged in the recourse against the decision that the reply was expected to reveal.

15 Coming to the substance, the trial Judge was impressed by the soundness of the first two criteria or guidelines relied upon by the respondents for the identification of the parties entitled to participate, and held that the decision of respondents is not vulnerable on any ground, dismissing thereby the recourse.

20 By way of guidance, reference is made, in the judgment, to the American solution to the problem of fair representation of the views of political contestants over the broadcasting media deriving from statutory provisions and judicial pronouncements. In the U.S.A., broadcasting is, unlike Cyprus, in private hands. 25 State supervision is exercised by virtue of the provisions of s.315 of the Communications Act of 1934, designed to ensure fair representation of competing or different political view-points. The need for fair play by broadcasting networks and the maintenance of a healthy balance with regard to the presentation of 30 different political viewpoints over the media, was recognised by the courts early on, almost as early as the advent broadcasting itself. In furtherance to constitutional guarantees, they evolved in this area, the doctrine of fairness as between political contestants designed to afford a fair opportunity to 35 each one to expound his views. The doctrine is based on the right of the public to be properly informed, as distinct from the claims of political adversaries to access to the media. In Cyprus, broadcasting is organised on the basis of a monopoly vested in a statutory corporation, viz. the Cyprus Broadcasting

Corporation. Arguably, the need for keeping the scales evenly among political parties becomes greater still in Cyprus, where broadcasting is monopolized by one body.

The learned Judge absolved the respondents of the accusation of discriminatory treatment and dismissed the suggestion made that the exclusion of the applicant was invidious to the provisions of Article 28. He summed up the effect of s.19(3) of Cap. 300A, requiring the observance of standards of fairness as between political parties, as follows: 5

“In my opinion, the true effect of s.19(3) of Cap. 300A is that the respondent (meaning the C.B.C.) should not discriminate against any political party in a manner which would now be inconsistent with the provisions of Article 28 of the Constitution”. 10

In the judgment of the Court, it is not specified, as in the decision of the respondents, whether the “Justice Party” was excluded because of its relative insignificance, notwithstanding its ranking as political party, as a matter of fair allocation of time between the political parties. 15

The appellant abandoned that part of the appeal turning on the application of Article 29 and limited his appeal to the substance of the case, inviting the Court to hold that the criteria upon which the applicant was excluded from participation were arbitrary, particularly the one making participation dependent on an invitation by the President of the Republic. The respondents, on the other hand, submitted that the appeal must be dismissed and that the decision was properly taken in exercise of their powers under s.19(3). The provisions of Article 28 were in no way infringed. More specifically, their submission is that it is doubtful whether the “Justice Party” qualified as a political party; further, that his exclusion was in any event justified in the exercise of their discretionary powers to keep a fair balance between political parties: 20 25 30

THE LEGITIMACY OF THE INTEREST OF THE APPLICANT TO RAISE THE PRESENT PROCEEDINGS: 35

In the course of the appeal proceedings the Court invited argument on a point not raised at any stage of the proceedings,

revolving round the legitimacy of the interest of applicant to raise and prosecute the present recourse. The issue touches upon the jurisdiction of the Court, therefore, we feel unconstrained to take it up notwithstanding our reluctance
5 to go into matters not raised on appeal. (See *Paraskevi Yiannaki v. The Republic of Cyprus* (1965) 3 C.L.R. 561, 567).

The matter raised concerns the interpretation of Article 146.2 and its application to the facts of the case. The interest necessary to sustain a recourse is defined by Article 146.2. It requires
10 that an existing legitimate interest of the applicant be prejudicially affected as a result of the decision impugned. To be direct there must be an unbroken causative chain between the decision and the interest vindicated. There must be *legitimo ad causum* in contrast to a general complaint of maladministration, to sustain a recourse. (See *Kyriakos Chrysostomides*
15 *v. Greek Communal Chamber*, 1964 C.L.R. 397, 402).

The right of a political association to access to the broadcasting media springs exclusively from the provisions of s.19(3), Cap. 300A. Neither the constitution nor any other law safeguard
20 access to the broadcasting network for any individual or group of persons for the propagation of their political views. The right conferred by s.19(3) is limited to groups or associations that properly qualify as political parties in the context of Cyprus legal and political institutions and realities. The right vests,
25 it seems, to parties and not to their members or functionaries. A proper appreciation of this juridical reality immediately casts doubts on the right of the applicant to litigate the present recourse; more so, in the absence of any allegation that the proceedings are raised by the applicant, either on behalf of
30 the "Justice Party" or in furtherance to a decision of the executive organ of the "Justice Party", the central committee. On the other hand, it would be incompetent for the applicant, not being the secretary, to raise proceedings on behalf of members of the "Justice Party" club (section 19, Cap. 112). On our invitation,
35 counsel addressed us on the circumstances under which a member of a body or association can make a recourse on its behalf. On examination of Greek case law, a tendency is discernible to construe broadly and not restrictively the element of direct prejudice necessary to sustain a recourse for the review
40 of an administrative act. (The subject is discussed in Tsatsos'

“Application for Annulment” 3rd ed., pp. 54–57). In France, the relaxation, it appears, has gone further though not to the extent of recognizing an *actio popularis*. We are not inclined to construe restrictively legal provisions conferring a right of recourse to the courts; on the contrary, access must be as wide as the law may permit. But we cannot ignore the mandatory constitutional provisions laying down that a right to judicial review accrues only where the right vindicated is directly affected as a result of the decision challenged. The antonym of “directly” is “indirectly”. Indirect interference with a right does not confer a right to judicial review. In Greece, where the element of directness is similarly postulated, it was held that no right to a recourse ensues where the prejudice complained of emanates or results from the implications of a decision on the rights of a third party. (See *Tsatsos*’ supra). An association, on the other hand, can prosecute a recourse only if, as a result of the decision, the rights of the association as such or those of its members in their entirety as distinct from the rights of individual members, are affected by the decision. (See, inter alia, *Demetriou as Chairman of C.B.C. Staff Society v. The Republic*, 1 R.S.C.C. 99; *The Bar Association of Nicosia etc., v. The Republic* (1975) 3 C.L.R. 24; *Cyprus Police Association & Others v. The Republic* (1974) 3 C.L.R. 152). Conversely, a member of an association cannot take up the causes of an association except in the face of gross indifference on the part of those representing it and in the face of an imminent danger that the complaint will become time barred. (See *Tsatsos*’ supra).

On any view of the facts of this case the legitimacy of the interest of the applicant to raise and maintain the present recourse, is highly questionable. The proceedings were raised in a personal and not a representative capacity and none of the remedies sought aimed to vindicate the rights of the “Justice Party”. The legitimacy of the interest becomes thinner still on appreciation of the fact that broadcasting time was not sought on behalf of the “Justice Party” but by the applicant as a prospective candidate in the 1981 elections. Having recorded our reservations on the propriety of the interest of the applicant to raise and maintain the present proceedings, we consider it inappropriate, in the absence of proper exploration of the factual background and full argument on the subject,

to pronounce finally on the nature of the interest necessary to entitle a member of an association to vindicate a cause of the association through judicial review. We reserve judgment for an appropriate future occasion. Therefore, we shall proceed
5 to examine the recourse on the merits as raised and argued before the trial Court and on appeal before us.

*POLITICAL PARTIES UNDER SECTION 19(3) OF THE
CYPRUS BROADCASTING CORPORATION LAW, CAP.
300A:*

10 In the judgment it is not made clear whether refusal of access to the applicant was upheld on account of the fact that the "Justice Party" does not qualify as a political party or as a matter of fair allocation of time between acknowledged political parties. Section 19(3) of Cap. 300A provides:

15 "The Corporation shall at all times keep a fair balance in the allocation of broadcasting hours as between political parties".

Section 19(3), read in the context of the law in its entirety, aims to ensure that broadcasting be instrumental to the promotion
20 of democratic rule, requiring that effective opportunity be given to opposing view-points to be put across to the people. The duty of the Corporation is twofold: Firstly to the public who have a right to adequate information on political issues, and secondly to political parties who have a right to a proper
25 platform for the ventilation of their views.

Neither in the judgment nor in the decision itself is the distinction made between the parties to whom the law confers a right to be heard on the one hand, and the discretionary powers of the Corporation to allocate between them time in a fair
30 manner, on the other. As a matter of proper interpretation of s.19(3), there is no discretion in the respondents to bar an association from access to the media once it qualifies as a political party. Each political party is entitled to access, the discretion of the respondents being limited to the determination of
35 the broadcasting time each party is entitled to.

Logically, the first question is whether a given association or organisation, in this case the "Justice Party", is a political

party. It is difficult, if not impossible, to define exhaustively the attributes of a political party. Apart from the factual, there are many philosophical angles that merit consideration. The definition suggested by counsel for the applicant "A group of persons who have the same political inclinations and who share common views and ideas on various issues", is inadequate in at least one respect, in that it does not encompass pursuit of political power as a vital element in the definition of a political party. It is this element, aspiration to political power, that distinguishes a political party from a pressure group. What constitutes a political party at any one time, entails answering a mixed question of law and fact. Without attempting a definition, we may, through a process of elimination, seek to answer the question by identifying some of the salient features without which no association or organisation can qualify as a political party. Its aims must be consonant to the law and in accordance with the principle of democratic rule implanted in our political system. In the fact-finding process, one need not travel very far to conclude that the "Justice Party" did not qualify as a political party. The first and foremost consideration in this process, is the regard of the public for a given association or organisation, and a useful test, though by no means an exclusive one, is the following: Would a reasonable man living in Cyprus and acquainted with the realities of the country identify the "Justice Party" as a political party? His decision in turn would depend on the practical and theoretical aims of the association, its institutions and organisation, regional and countrywide, as well as the response of the public to it. Past popularity as such, at any one time, is by no means decisive for in a democracy currents of public opinion change and stock must always be taken of possible swings of the pendulum.

On examination of the claim of the "Justice Party", assuming it to have been properly made through Mr. Pitsillos to rank as a political party, one is struck by the following facts:

There is nothing to suggest that the organisation of the "Justice Party" extended beyond that of the social club "Justice Party". To claim political status from the springboard of a club registered under the provisions of Cap. 112, would be tantamount to ignoring the realities of political parties.

There is a total absence of any indication that the "Justice Party" evolved any concrete policies relevant to the problems of our times or the issues that faced the electorate in the 1981 elections. Participation by the leader of a group in a past election, does not render the group a contestant of political power.

In our judgment, the respondents were right in not extending an invitation to the "Justice Party" to participate in the "Meet the Press" series, on the ground that they did not qualify as a political party. Consequently, the appeal must be dismissed.

Appeal dismissed.