

1983 December 30

[LORIS, J ]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ATHLITICOS PNEVMATIKOS OMILOS "ETHNICOS",  
*Applicant*

1.

KYPRIACOS ORGANISMOS ATHLITISMOU, THROUGH  
ANOTATI DIKASTIKI EPITROPI ATHLITISMOU,  
*Respondent*

(Case No 415/83)

---

KYPRIAKI OMOSPONDIA PODOSFEROU,  
*Applicants,*

1.

KYPRIACOS ORGANISMOS ATHLITISMOU THROUGH  
ANOTATI DIKASTIKI EPITROPI ATHLITISMOU,  
*Respondent.*

(Case No. 423/83).

---

*Act or decision in the sense of Article 146 1 of the Constitution—  
Cyprus Football Federation—An unincorporated body—Charter  
of—A private document—Interpretation of section 3 of the charter  
by the Supreme Judicial Committee of Athleticism—A decision  
in the domain of private law and not amenable to the jurisdiction  
under Article 146 1 of the Constitution*

5

These recourses were directed against the validity of a decision of the Supreme Judicial Committee of Athleticism (A D E.A ) concerning the interpretation placed by the Committee on section 3 of the charter of The Cyprus Football Federation It was common ground that the Federation was an unincorporated body

10

*Held,* that the charter of the Cyprus Football Federation is

nothing more than a private document setting down in writing a private agreement between the Federation and its members; that the interpretation of a private document as above by the respondent amounts to a decision in the domain of private law and therefore it is not amenable to the jurisdiction under Article 146.1 of the Constitution; and that, therefore, both recourses are doomed to failure and they are accordingly dismissed.

*Applications dismissed.*

Cases referred to:

10 *Stamatiou v. Electricity Authority of Cyprus*, 3 R.S.C.C. 44.

**Recourses.**

Recourses against the decision of the respondent whereby it was decided that the applicant club did not satisfy the requirements of the General Regulations of K.O.P. to be registered as a club in the 3rd Division of K.O.P.

*A.S. Angelides with I. Typographos*, for applicants in Case No. 415/83.

*A.S. Angelides*, for applicant in Case No. 423/83.

15 *M. Christofides with P. Ioannides*, for respondents in both cases.

20 *A. Georghiou*, for the interested party.

*Cur. adv. vult*

LORIS J. read the following judgment. The above intitled cases were, with the consent of all concerned, heard together on preliminary legal issues going to the jurisdiction of this Court

Case No. 415/83 was filed on 11.10.1983 by "Athleticos Pnevmatikos Omilos 'Ethnicos' ", whilst case No. 423/83 was filed on 13.10.1983 by the Cyprus Federation of Football (K.O.P.). The respondent in both cases is thus described

30 The Cyprus Organisation of Athleticism (K.O.A.) through the Supreme Judicial Committee of Athleticism (A.D.E.A.).

By virtue of the prayer in both recourses a declaration is sought to the effect that the decision in ex. 1 is null and void (in recourse No. 423/83 an ancillary relief is claimed as well)

35 The opposition filed in both aforesaid recourses raises two

common preliminary objections to the jurisdiction of this Court as follows:

- (a) That this Court has no jurisdiction to entertain either application as the respondent is not an organ, authority or person, exercising any executive or administrative authority in the sense of paragraph 1 of Article 146 of the Constitution. 5
- (b) that the act and/or decision impugned is not of an executory nature.

Further to the above 2 common objections another preliminary objection is being raised in case No. 423/83; this preliminary objection is twofold: 10

The applicants, it is maintained, could not institute present proceedings as (i) they are not either physical or legal entities, (ii) they are not "persons" in the sense of Article 146.2, having any existing legitimate interest, adversely and directly affected by the decision in question. 15

Before proceeding to examine the preliminary objections above enumerated, I feel that I should deal very briefly with some steps in the present proceedings taken before the hearing of the preliminary legal issues in question. 20

On 14.10.1983 when the application for a provisional order, filed on behalf of the applicants in case No. 415/83, was originally fixed for hearing, advocate A. Georghiou appeared as well and applied orally that the "Σωματείο Δόξα Παληομετόχου" be allowed to intervene as an interested party; (in this respect it may be noted that the sub judice decision was taken by A.D.E.A. on an application to it by "Δόξα" Παληομετόχου) at some later stage a proper application in writing was filed by "Δόξα" Παληομετόχου to that effect and eventually leave was granted to the above club to be joined as an interested party. 25 30

Finally in view of the fact that an early date for hearing of the main recourse was given learned counsel for applicants in recourse No. 415/83 applied that the application for provisional order do remain in the file, a course which was adopted by the Court in view of the aforesaid application of Counsel for applicants. 35

On 31.10.1983 when both recourses came before me for hearing—and it was the first time that the preliminary legal objections, contained in the relevant oppositions, were set out in black and white—I ruled that the hearing in both recourses  
5 be confined to the preliminary legal issues which go to the jurisdiction.

Thus learned Counsel representing both respondents elaborated at length on the preliminary legal issues raised, learned counsel appearing for the interested party adopted the argument  
10 advanced on behalf of the respondents and Mr. A.S. Angelides appearing for the applicants in both recourses addressed the Court covering the whole field of the preliminary legal issues raising at the same time in the course of his able address a novel point not contained in the preliminary legal issues notably  
15 the question of certain regulations in connection with A.D.E.A. being, allegedly, ultra vires the enabling enactment.

Before proceeding further I consider it pertinent at this stage to deal very briefly with the setting up and functions:

- 20 (a) of the Cyprus Organisation of Athleticism (K.O.A.) and
- (b) the Supreme Judicial Committee of Athleticism (A.D. E.A.), as the decision of the latter dated 7.10.1983, appearing in ex. 1, is being impugned by means of both recourses under consideration.

25 The Cyprus Organisation of Athleticism (Κυπριακός Οργανισμός Αθλητισμού) is the special creation of Law 41 of 1969 which was later amended by Laws: 22 of 1972, 2 of 1973, 51 of 1977 and 79 of 1980; Law 27 of 1979 is relevant in connection with the transfer of the relevant powers under  
30 the Law from the Ministry of Education to the Ministry to the Presidency.

Regulations made under the Original Law and published in the official Gazette of the Republic under No. 817 of 13.10. 1970 (vide Notification 832 in Suppl. No. 3) provided inter  
35 alia for the setting up of a Supreme Court for Athleticism (Ανώτατο Αθλητικό Δικαστήριο—vide rule 11 of the Regulations), which was renamed into “Supreme Judicial Committee of Athleticism” Ανωτάτη Δικαστική Επιτροπή Αθλητισμού

—(A.D.E.A.) by virtue of amended Regulations published in Not. 360 of Supplement No. 3 to the Official Gazette No. 877 of 28.5.1971.

The main question which falls for determination is whether the respondent "A.D.E.A." has acted in the matter in question as an "organ, authority or person, exercising any executive or administrative authority" in the sense of paragraph 1 of Article 146 of the Constitution.

Furthermore "whatever the general and predominant character of the respondent might precisely be, it is only relevant for the purposes of this case to consider whether, in relation to the particular function which is the subject matter of this recourse, the respondent was acting in the capacity of an "organ, authority or person, exercising any executive or administrative authority" in the sense of paragraph 1 of Article 146 (vide *Staniou v. The Electricity Authority of Cyprus*, 3 R.S.C.C. 44).

The particular function of the respondent A.D.E.A. which is the subject-matter of both recourses under consideration is its decision appearing in ex. 1. From perusal of the decision in question it clearly transpires that the respondent A.D.E.A. was setting down therein its interpretation placed on section 3 of the Charter of Kypriaki Omospondia Podosferou (K.O.P.); it is common ground that K.O.P. is an unincorporated body and I agree with learned counsel appearing for the respondents that the Charter of K.O.P. is nothing more than a private document setting down in writing a private agreement between K.O.P. and its members.

I hold the view that the interpretation of a private document as above by the respondent amounts to a decision in the domain of private law and therefore it is not amenable to the jurisdiction under Article 146.1 of the Constitution. Both recourses are therefore doomed to failure and they are accordingly dismissed.

Before concluding I want to make it clear that I leave entirely open the question whether the respondent A.D.E.A. is an "organ, authority or person, exercising any executive or administrative authority" in the sense of Article 146.1.

Having decided as above I consider it unnecessary to deal

with the remaining preliminary objections nor do I intend dealing with the point raised by the address of learned counsel appearing for the applicants, namely the allegation that certain regulations in connection with A.D.E.A. are ultra vires the enabling enactment.

In the result both the above-mentioned recourses are hereby dismissed with no order as to costs thereof.

*Recourses dismissed with no order as to costs.*