

1984 May 29

[TRIANTAFYLIDES, P., A. LOIZOU, SAVVIDES, STYLIANIDES & PIKIS, JJ.]

“ETHNIKOS” ATHLITIKOS PNEVMATIKOS OMILOS  
DEFTERAS,

*Appellant.*

v.

1. K.O.A.
2. A.D.E.A.,

*Respondents.*

*(Revisional Jurisdiction  
Appeal No. 357).*

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K.O.P.,

*Appellant,*

v.

1. K.O.A.,
2. A.D.E.A.,

*Respondents.*

*(Revisional Jurisdiction  
Appeal No. 359)*

*Act or decision in the sense of Article 146.1 of the Constitution—  
Decision of High Sports Judicial Committee (A.D.E.A.) taken  
on an appeal against a decision of the General meeting of the  
Cyprus Football League (K.O.P.)—Is a decision in the domain  
of public law and can be made the subject of a recourse under  
the above Article.*

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In the football year 1982–83 the appellant “Ethnikos” was the first winner in the S.T.O.K. football championship. Under the General Rules of the Cyprus Football League (K.O.P.) it was one of the requirements for the elevation to K.O.P. that the winner of S.T.O.K. should have its seat at a town or village with a population of over 1,500 inhabitants. When K.O.P. in a General Meeting decided to admit “Ethnikos” in its 3rd division, the interested party “DOXA” a football club of Palkometochi village which was the 4th winner in the S.T.O.K. championship and interested to keep “Ethnikos” out of K.O.P., resorted to the High Sports Judicial Committee (A.D.E.A.) challenging the aforesaid decision. A.D.E.A. took up the case as an “athlitiki dikastiki ypothesi” (sports judicial case) and after concluding that the General meeting of K.O.P. acted con-

trary to Article 3 of the General Rules of K.O.P. annulled the decision of the general meeting.

The appellant "Ethnikos" challenged the decision of A.D.E.A. by means of a recourse which was dismissed on the ground that the act challenged was not justiciable, being in the domain of private law. 5

*Upon appeal:*

*Per Stylianides, J., A. Loizou, Savvides and Pikis, JJ. concurring and Triantafyllides, P., dissenting.*

*Held*, that A.D.E.A. was established by law—Law 41/69— and its powers, duties and functions are regulated by Law; that it determined a sports judicial dispute "athlitiki dikastiki ypothesis" and it exercised imperium; that it did not simply construe the General Regulations of K.O.P. which per se is a document of private law; that the nature and character of the function of A.D.E.A. with regard to the sub judge decision is primarily one of public purpose—the promotion and proper functioning of the sports and particularly football; that it is an act or decision within the realm of public law; that its decision is binding and it has direct consequences upon football societies and the football association and athletics in general; and that, therefore, A.D.E.A. issued the sub judge decision in the exercise of a unilateral power given to it by Law for a public purpose and, therefore, its decision is in the domain of public Law; accordingly the decision challenged is amenable to the jurisdiction of this Court as it satisfies the requirements of Article 146 of the Constitution. 10 15 20 25

*Order accordingly.*

Cases referred to:

- Stamatiou v. Electricity Authority of Cyprus*, 3 R.S.C.C. 44; 30  
*Sevastides v. Electricity Authority of Cyprus* (1963) 2 C.L.R. 497;  
*Greek Registrar of Co-operative Societies v. Nicolaides* (1965)  
 3 C.L.R. 164 at p. 170;  
*Kalisperas Estates Co. Ltd. v. Ministry of Interior* (1982)  
 3 C.L.R. 509; 35  
*Koudounaris Food Products Ltd. v. The Republic* (1982) 3 C.L.R.  
 530;  
*Republic v. M.D.M. Estate Developments Ltd.* (1982) 3 C.L.R.  
 642;  
*Decisions of the Greek Council of State Nos: 840/73 and 2238/74.* 40

**Appeals.**

Appeals against the judgment of a Judge of the Supreme Court of Cyprus (Loris, J.) given on the 30th December, 1983 (Revisional Jurisdiction Cases Nos. 415/83 and 423/83)\* whereby appellants' recourses were dismissed as the acts challenged were held not to be justiciable as being in the domain of private law.

*A.S. Angelides with I. Typographos*, for the appellant in Rev. Appeal 357.

*A.S. Angelides*, for the appellant in Rev. Appeal 359:

*M. Christofides*, for respondents.

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

*Cur. adv. vult.*

TRIANTAFYLLIDES, P.: Mr. Justice Stylianides delivered the judgment of the majority of the Court.

STYLIANIDES, J.: These appeals are directed against the decision of a Judge of this Court whereby the recourses of the appellants were dismissed as the acts challenged were not justiciable, being in the domain of private law.

The preliminary objection was raised in the opposition that this Court has no jurisdiction as the act complained of is not an act within the ambit of paragraph 1 of Article 146 of the Constitution.

It is well settled that only unilateral acts of the Administration in the exercise of potestas and/or imperium in the domain of public law producing legal results, as opposed to rights derived from an agreement entered into between the parties, are amenable to judicial control by this Court.

The matter was dealt with by the Supreme Constitutional Court and this Court in numerous decisions.

In *John Stamatiou and The Electricity Authority of Cyprus* 3 R.S.C.C. 44, it was said that whatever the general and predominant character of the organ, authority or corporation, it is only relevant for the purposes of the case to consider whether, in relation to the particular function which is the subject-matter of the recourse, the respondent was acting in the capacity of an organ, authority or person, exercising any executive or administrative authority.

In *Sevastides and The Electricity Authority of Cyprus*, (1963

\* Reported in (1984) 3 C.L.R. 140.

2 C.L.R. 497, it was said that due regard must be had not only to the nature and character of the respondent corporation but also, primarily, to the powers vested in, and duties imposed on, such public corporation and its functions generally, as well as to the particular nature of the decision, act or omission concerned. 5

The following test was laid by the Full Bench in *The Greek Registrar of the Co-operative Societies v. Nicos A. Nicolaidis*, (1965) 3 C.L.R. 164, at p. 170:-

“In the opinion of the Court it is primarily the nature and character of a particular act or decision which determines whether or not such act or decision comes within the scope of paragraph 1 of Article 146 of the Constitution. Such an issue is one which must be decided on the merits and in the circumstances of each particular case and having due regard to such relevant factors as the office and status of the organ, authority, person or body performing such act or taking such decision, as well as to the circumstances and context in which such act was performed or decision taken. As pointed out by the learned Judge in his Ruling..... the ‘same organ may be acting either in the domain of private law or in the domain of public law depending on the nature of its action’. Ultimately, what is the important and decisive factor in this respect is the nature and character of the particular function which is the subject-matter of a recourse”.

This was reiterated and applied in a number of decisions during the last score of years.

Appellant in Appeal No. 357 is “Ethnikos” Athlitiko Pnevmatikos Omilos, a sports club of Deftera village. 30

Appellant in Appeal No. 359 is K.O.P. It is the Cyprus Football League or Association. It has three divisions. It is governed by its own rules. The last two football clubs of the 3rd division every year drop out and the first two winners of inferior football association, namely, S.T.O.K., are elevated to K.O.P., provided that they satisfy the other requirements of the General Rules of K.O.P. 35

K.O.A., the Cyprus Sports Organization, was established by Law No. 41/69. This Law was amended by Laws No. 22/72, 2/73, 51/77, 27/79 and 79/80. It is the highest sports authority 40

in the Republic—(section 4(1) ). Its members are appointed by the Council of Ministers.

The purpose of K.O.A., as set out in s.5 of the Law, as amended, is the promotion of sports and athletics in the country. For this purpose it exercises wide and extensive powers given to it by Law. They include, inter alia, the construction of stadiums, athletic centres to be used by the public, the subsidy of athletic clubs and leagues; the organization of various sports and control and supervision of all sport places in the country except school sports; the determination of all disputes between sport leagues and sport clubs. It has the power to compulsorily acquire property for the promotion of its objects and the disposition and charge of immovable property belonging to the organization, subject to the prior approval by the Council of Ministers. It has the power to impose punishment on sport associations, clubs, officials, athletes, sportsmen, etc.; it has disciplinary jurisdiction over the sport leagues, associations, clubs, etc., and has an appellate jurisdiction to determine and pronounce on all appeals made against a decision of any league or association; it may establish any committees, bodies or organs for the purpose of its powers and duties. It is enabled by law to make regulations subject to the approval of the Council of Ministers.

K.O.A., established by Law, is a corporation of public law though some of its activities may not be in the sphere of public law.

By the Cyprus Sports Organization (General Orders and Disciplinary) Regulations, 1970—Regulation 11—a High Sports Court was established which, however, by r.3 of the amending regulations of 1971, published in the Cyprus Gazette, Suppl. No. III, Notification No. 360, it was renamed to High Sports Judicial Committee (A.D.E.A.).

A.D.E.A. was established to perform the function of K.O.A. set out in s.6(2)(ia) and (iy) of the Law, now renumbered to 5(2)(ia) and iy).

Regulation 14 conferred on A.D.E.A. original and appellate jurisdiction.

Refusal or failure to comply with any decision of A.D.E.A. entails the immediate striking off from the roll of the defaulter and the characterization of the person responsible for such failure

or default as “non-sportsman”. This characterization entails the sanctions set out in regulation 16(4).

In the football year 1982–1983 the appellant “Ethnikos” was the first winner in the S.T.O.K. football championship.

Under the General Rules of K.O.P. it is one of the requirements for the elevation to K.O.P. that the winner of S.T.O.K. should have its seat at a town or village with a population of over 1,500 inhabitants. 5

K.O.P. in a General Meeting decided to admit “Ethnikos” in its 3rd division. 10

The interested party “DOXA” is a football club of Paleometochos village. It was the 4th winner in the S.T.O.K. championship. Having an interest to keep “Ethnikos” out of K.O.P., it resorted to A.D.E.A. challenging the aforesaid decision.

A.D.E.A. took up the case as an “athlitiki dikastiki ypothesis” (sports judicial case). A preliminary objection was raised by K.O.P. that the case was not within the jurisdiction of A.D.E.A. being outside the ambit of the definition of “athlitiki dikastiki ypothesis” (sports dispute) in the sense of the Regulations. A.D.E.A. decided that it had jurisdiction and competence to deal with the case. Thereafter, relying on the construction it placed on the Rules of K.O.P. relevant to the case, it concluded:- 15 20

“For the aforesaid reasons we decide that ‘Ethnikos’ of Pano and Kato Deftera does not satisfy the requirements of Article 3 of the General Rules of K.O.P. and particularly it is not a society (‘sotation’) of a village with a population of over 1,500 inhabitants. Therefore, A.D.E.A. decides that the General Meeting of K.O.P. in deciding to admit it in the 3rd division of K.O.P. acted contrary to specific provision of the Regulations and, therefore, such decision (of K.O.P.) is null and void”. 25 30

It is the validity of this decision of A.D.E.A. that the appellants challenge by their respective recourses.

From what has already been said, it is clear that A.D.E.A. was established by Law and its powers, duties and functions are regulated by Law. It determined a sports judicial dispute (“athlitiki dikastiki ypothesis”). It exercised imperium. It did not simply construe the General Regulations of K.O.P. which per se is a document of private law, as submitted by counsel for the respondents and accepted in the judgment under appeal. 35 40

The nature and character of the function of A.D.E.A. with regard

to the sub judice decision is primarily one of public purpose—the promotion and proper functioning of the sports and particularly football. It is an act or decision within the realm of public law. Its decision is binding and it has direct consequences upon football societies and the football association and athletics in general. Failure to obey or comply with the decision of A.D.E.A. entails serious adverse consequences.

In conclusion A.D.E.A. issued the sub judice decision in the exercise of a unilateral power given to it by Law for a public purpose and, therefore, its decision is in the domain of public Law. The decision challenged is amenable to the jurisdiction of this Court as it satisfies the requirements of Article 146 of the Constitution.

TRIANTAFYLIDES P.: I regret that I cannot agree with the judgment of the majority of the Court which has just been delivered by my learned brother Mr. Justice Stylianides, as regards the issue of the jurisdiction of this Court, under Article 146 of the Constitution, to entertain the recourses (Nos. 415/83 and 423/83) of the appellants, which were dismissed, in the first instance, by a Judge of this Court, Mr. Justice Loris, for want of jurisdiction (see, in this respect, "*Ethnikos*" v. *K.O.A.*, (1984) 3 C.L.R. 140).

I will neither state in this judgment the salient facts of these cases nor refer to the relevant legislative provisions because they are adequately set out in the judgments of Loris, J. and Stylianides, J.

It is well established that on the basis of the correct construction and application of Article 146.1 of the Constitution, as it is to be found in case-law of this Court, there cannot be subjected to judicial control, by means of a recourse under Article 146, all decisions emanating from administrative organs but only those of such decisions which come primarily within the domain of public law, and not of private law (see, inter alia, in this respect, *Kalisperas Estate Co. Ltd. v. Ministry of Interior*, (1982) 3 C.L.R. 509, *Coudounaris Food Products Ltd. v. The Republic*, (1982) 3 C.L.R. 530 and *The Republic v. M.D.M. Estate Developments Ltd.*, (1982) 3 C.L.R. 642).

Without overlooking the status and powers of respondent 2, which is the Supreme Judicial Committee for sporting matters and has been set up by respondent 1, which is the Cyprus Sports Organisation, and without excluding the possibility that a

decision of respondent 2 other than such as the one involved in the present proceedings may be found to come within the ambit of the jurisdiction under Article 146.1 of the Constitution, I am of the view that the decision of respondent 2 which has been challenged by the aforementioned two recourses comes primarily within the domain of private law, and not of public law. 5

The aforesaid decision was taken by respondent 2 when there was challenged before it a decision of the appellant in Revisional Jurisdiction Appeal 359, which is the Cyprus Football Association, by means of which the appellant in Revisional Jurisdiction Appeal 357 was accepted as one of the football clubs in the Third Division of the Association. The said Association is not an organ of public administration but a private association of football clubs. 10

The fact that by the decision of respondent 2 there was annulled the decision in question of the Association, with the result that the appellant in Revisional Jurisdiction Appeal 357 ceased to participate in the Third Division of the Association, and the fact that this development generated considerable public interest is not, in my opinion, a sufficient reason for which to treat the sub judice decision of respondent 2 as a matter coming within the domain of public law, when, otherwise, because of its nature, it is a matter primarily within the domain of private law. 15 20

I have in mind that the Council of State in Greece (see, for example, the Decisions of the Council of State in cases 840/1973 and 2238/1974) has held that decisions of an organ in Greece which is similar to respondent 2 can be challenged before the Council of State by a recourse for annulment, which corresponds to a recourse under Article 146.1 of our own Constitution, but the relevant Decisions of the Council of State in Greece were reached in view of the existence of legislative provisions there which are not to be found in our own legal system. 25 30

For all the foregoing reasons I am of the view that these two Appeals ought to be dismissed on the grounds that, as correctly found by the trial Judge, this Court does not possess jurisdiction, under Article 146.1 of the Constitution, to control judicially the sub judice decision of respondent 2. 35

TRIANTAFYLLIDES P.: These appeals are allowed by majority and there will not be made any order as to their costs.

*Appeals allowed by majority. No order as to costs.* 40