1984 January 13

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

DR. ANDREAS VORKAS AND OTHERS,

Applicants,

v.

THE REPUBLIC OF CYPRUS, THROUGH
1. THE MINISTER OF HEALTH AND
2. THE DIRECTOR OF MEDICAL SERVICES AND THE SERVICES OF PUBLIC HEALTH,

Respondents.

(*Case No.* 204/83).

Recourse for annulment—Interested party—Right of, to take part in the proceedings—Test applicable—Legitimate interest——Article 146.2 *of the Constitution—Recourse by Government Medical Officers challenging validity of decision restricting exercise of medical practice outside Government medical institutions—"Association of Private Doctors" entitled to take part in the proceedings as interested parties.*

The applicants, 31 Medical Officers in the employment of the Republic, challenged the validity of a circular issued by the Ministry of Health proclaiming the applicability of s.65(3) of the Public Service Law, 1967 (Law 33/67) to Government doctors, restricting in consequence the exercise of medical practice outside Government medical institutions. The circular applied to and purported to regulate the exercise of consulting practice as well, to the prejudice of the rights of the applicants, as alleged in the recourse.

On the question whether the "Association of Private Doctors" could take part in the proceedings as interested parties:

Held, that where the risk of prejudice to the interests of a party is direct as opposed to remote and reasonably foreseeable,

the party at risk of prejudice is entitled to challenge the decision and by the same token every other party likely to be prejudicially affected by its revocation; that mere contemplation of the rights of the Association to raise a recourse in the face of a decision authorising private practice by Government Medical Officers in alleged violation of the provisions of the Public Service Law, would convince that they have a right to be joined as interested parties; that they would have a right to challenge by recourse a decision, authorising such a practice and, test its legitimacy before the Court; that the concept of interest under Article 146.2 of the Constitution and, administrative law in general, for that matter, is not identical with that of a right at private law; that it is a broader concept, not tied to financial benefits or detriment and, flexible to the extent of justifying a recourse to the Court whenever professional, as well as other interests, are truly at at stake; accordingly the Association of Private Doctors are entitled to take part in these proceedings as interested parties.

Application granted.

Cases referred to:

Pitsillos v. *C.B.C.* (1982) 3 C.L.R. 208 at pp. 214, 217;

Josephides v. *Republic*, 2 R.S.C.C. 72 at p. 75;

Theodorides and Others v. *Ploussiou* (1976) 3 C.L.R. 319;

Decisions of the Greek Council of State Nos.: 480/30, 299/32, 488/53, 1481/53 and 676/47.

Application.

Application by the "Association of Private Doctors" to take part in the proceedings in a recourse whereby the applicants challenged the validity of a circular issued by the Ministry of Health restricting the exercise of medical practice outside Government medical institutions.

K. Talarides, for the applicants.

N. Charalambous, Senior Counsel of the Republic, for the respondents.

T. Papadopoulos, for the "Association of Private Doctors".

St. Nathanael, for the "Pancyprian Medical Association" in watching brief.

Cur. adv. vult.

PIKIS J. read the following judgment. The right of the "Association of Private Doctors", an association registered under the Club Law—Law 57/72, to intervene in the proceedings and take part as interested parties, is the sole issue to be determined at this stage. The application of the Association to intervene in the proceedings was opposed by the applicants, on grounds of absence of a legitimate interest in the outcome of the proceedings. Notwithstanding the purposes of the Association, as defined in the Memorandum including a provision making the protection of their interests one of the objects of the Association, it was submitted for the applicants that the quashing of the sub judice decision will leave their interests unaffected or at least it will not presently prejudice their interest in the direct way necessary to legitimise joinder in the proceedings. For the Association, on the other hand, it was submitted that the interests of all its members are likely to be affected by the annulment of the decision to the professional and financial detriment of its members. Such detriment is likely to arise immediately upon the revocation of the circular, in a manner entitling them to be heard for the protection of their interests. In an affidavit sworn to by the Chairman of the Association, namely Dr. Fessas, it is asserted that detriment will inevitably arise to its members if the sub judice act is set aside.

Joinder is opposed on two other grounds of lesser importance. The one concerns representation of the Association by advocate Mr. T. Papadopoulos, on the ground that his ex Ministerial capacity as Minister of Health, prevents him from appearing. This ground, although raised, was not pressed to the end, wisely so for, there does not appear any obstacle to Mr. Papadopoulos representing the Association. I shall dwell on this point no further.

The next objection is directed to the absence of a formal decision on the part of the Association, authorising participation in the proceedings. Such authorisation is, to my comprehension, implicit from the affidavit of Dr. Fessas, the Chairman of the management council of the Association. Authorisation is pre-eminently an internal matter and, in the absence of any indication to the contrary, we can validly presume the application to join in the proceedings emanates from and reflects the wishes of the Association. In *Pitsillos* v. *C.B.C.* (1982) 3 C.L.R. 208, 214, 217, we hinted at the prerequisites for the

validation of a recourse by an association. The objects of the Association and the interests of the Association arising therefrom, must be at risk, or the interests of its members in their entirety, or a substantial portion of them, must be prejudicially affected in order to legitimise a recourse under Article 146. As *Skouris* explains in his *Treatise,* on the right of third parties to raise a recourse, amenity depends on the nexus between the objects of the association and the interests prejudiced by the impugned decision. Elsewhere, he notes that the interests at risk need not be financial, a position reflecting settled principles of administrative law defining legitimate interest as encompassing interests other than strictly financial (see, *Honorary Tome of the Greek Council of State* 1929-1979, Vol.1, p.379 and p.375, respectively).

In the *Pitsillos* case, we noticed that in Greece the tendency is towards construing broadly the right to have resort to the Court, a tendency more prominent still in France. We welcomed this tendency as a salutary one in *Pitsillos,* supra, a tendency consistent with the provisions of Article 30.1 safeguarding access to the Court. Access to the Court must be as wide as the law permits. One of the limitations envisaged by Article 146.2. is that prejudice must be direct as opposed to an indirect one. In the submission of Mr. Talarides, the same test applies to determining whether a third party intervention is justified. With the exception of *Prof. Tsatsos,* Greek authors take the view, as he argued, that the interests of an intervener must be judged by the same criteria and standards applicable to test the legitimacy of the right of an applicant to prosecute a recourse. *Stassinopoulos* subscribes to the view that the legitimacy of the interest of a party to intervene in the proceedings, is broadly tested by the same criteria as those applicable to determine the legitimacy of the interests of an applicant (see, *Stassinopoulos- The Law of Administrative Disputes,* p.245). *Kyriacopoulos* argues that the injury or benefit of the intervener must be direct and specific in much the same way as that of the applicant must be (see, *Kyriacopoulos - Greek Administrative Law,* 3rd ed., Vol. 3, p.139). *Prof. Tsatsos,* on the other hand, takes a more benevolent line for the intervener, arguing that his interests need not be defined as strictly as must be the right of an applicant. The proceedings are already extant and it is, in his view, in the interests of justice that the issue should be aired from every

relevant angle (see, *Tsatsos - Application for Annulment*, 3rd ed., p.279).

Cyprus caselaw does not illuminate the ground on the precise nature of the interest of a third party that must subsist in order to justify intervention. The right of a party whose interests are at risk or prejudiced by the annulment of the decision to take part in the proceedings as an interested party, was recognised soon after the introduction of administrative law in Cyprus - see, *Josephides v. Republic*, 2 R.S.C.C. 72, 75. In that case, the immediacy and directness of the interest of the interested party, the successful candidate for the post of Budgeting Officer, was beyond question. Consequently, the decision throws little light on the complexion of the interest that must subsist to legitimise intervention or the limitations of the right.

The right of an interested party to take part in the proceedings was affirmed as settled practice by the Full Bench of the Supreme Court, in *Theodorides And Others v. Ploussiou* (1976) 3 C.L.R. 319. Here again, the decision itself does not define the extent of the right; nevertheless it is valuable in that it suggests that the right to take part in the proceedings as an interested party is comparable to that of an intervener in Greece and France and, should be exercised along similar lines. Its exercise in Cyprus was formalised by directions issued under Ord.19 to serve copy of the recourse upon every party, likely, on the face of the recourse, to be prejudiced by the annulment of the sub judice decision. The Court did not examine whether Ord.9 of the Civil Procedure Rules has any bearing on the matter in view of the provisions of Ord.18 of the Supreme Constitutional Court Rules, making applicable Civil Procedure Rules subject to necessary modifications. If at all relevant, it suggests that the Court has a discretion in the matter and, in case of doubt as to the necessity for joinder, the advisable course is to allow joinder in the interests of justice (see, *The White Book*, 1958, on Ord.16 of the old Rules of the English Supreme Court, upon which Ord.9 of the Civil Procedure Rules is modelled).

In order to determine the nature of the interest of the Association in the proceedings and ascertain the prejudice, if any, likely to be occasioned to the members of the Association, we must make reference, albeit brief, to the nature of the dispute between the applicants and the Republic. The applicants, 31

Medical Officers in the employment of the Republic, challenge the validity of a circular issued by the Ministry of Health proclaiming the applicability of s.65(3) of the Public Service Law 33/67 to Government doctors, restricting in consequence the exercise of medical practice outside Government medical institutions. The circular applies to and purports to regulate the exercise of consulting practice as well, to the prejudice of the rights of the applicants, as alleged in the recourse.

I find it unnecessary to decide conclusively in these proceedings whether a lesser interest to that needed to legitimise a recourse, will suffice to validate an intervention for, on a strict test as well, the Association qualifies as an interested party. Although, I must record that I find much to commend the suggestion of Prof. Tsatsos considering the object of judicial review and the tendency to ensure access to the Court to everyone having a palpable interest of the matter in dispute.

Mr. Papadopoulos laid emphasis on two decisions of the Greek Council of State, highlighting the nature of the interest that a third party must possess to justify intervention. In the first case - 480/30, the Greek Council of State held that a pharmaceutical association had a legitimate interest to invervene in support of a decision of the Minister of Health refusing permission to set up a pharmacy in a given area of Athens. In the second case, notably 299/32, the pharmaceutical association was held to be entitled to intervene in support of a decision of the Minister restricting the co-establishment of a pharmacy and a pharmaceutical store, on the ground that the association had an interest in the strict enforcement of legislation regulating the establishment of pharmacies. The aforesaid cases, as well as a series of other decisions of the Greek Council of State, suggest that the likelihood of increased competition justifies intervention on the part of an association the interests of whose members are likely to be injured in consequence of the annulment of the sub judice decision - see, inter alia, Cases 488/53 and 1481/53. Of direct relevance is the decision in Case 676/47, deciding that a professional association has an interest in an administrative decision bearing on the number of the members of the profession. What emerges, is that where the risk of prejudice to the interests of a party is direct as opposed to remote and reasonably foreseeable, the party at risk of prejudice is entitled to challenge the

decision and by the same token every other party likely to be prejudicially affected by its revocation. So, even if we were to apply a stricter test, the Association would still qualify as an interested party. Mere contemplation of the rights of the Association to raise a recourse in the face of a decision authorising private practice by Government Medical Officers in alleged violation of the provisions of the Public Service Law, would convince that they have a right to be joined as interested parties. They would have a right to challenge by recourse a decision, authorising such a practice and, test its legitimacy before the Court. The concept of interest under Article 146.2 of the Constitution and, administrative law in general, for that matter, is not identical with that of a right at private law. It is a broader concept, not tied to financial benefits or detriment and, flexible to the extent of justifying a recourse to the Court whenever professional, as well as other interests, are truly at stake.

Lastly, a word about costs. The applicant will not normally be required to bear the costs of an interested party, independently of the result and may, if the interested party, by his intervention, has unreasonably contributed to the expense of litigation, be allowed to recoup part of the litigation expenses from the interested party. To that, one must add that, in the ordinary course of events, it is advisable to defer a decision on costs until the end of the day, when the matter can be purviewed spherically.

The applicants are entitled to take part in these proceedings as interested parties and I so rule. Order accordingly.

Order accordingly.