

1985 February 28

[PIKIS, J.]

IN THE MATTER OF ARTICLE 146  
OF THE CONSTITUTION

ELENI THEODOSIADOU AND OTHERS,

*Applicants,*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE MINISTER OF THE PRESIDENCY.  
2. THE MINISTER OF FINANCE,

*Respondents.*

*(Case No. 416/84).*

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NICOS ROUSOS,

*Applicant.*

v.

THE REPUBLIC OF CYPRUS, THROUGH  
1. THE PUBLIC SERVICE COMMISSION,  
2. THE MINISTRY OF INTERIOR.

*Respondents.*

*(Case No. 538/84).*

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THEODOROS MARINOS,

*Applicant,*

v.

THE PUBLIC SERVICE COMMISSION,

*Respondent.*

*(Case No. 560/84).*

GAVRIEL P. LOUCAIDES,

*Applicant,*

v.

THE PUBLIC SERVICE COMMISSION,

*Respondent.*

(Case No. 607/84).

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5 *Amicus curiae—Dismissal of recourses because of absence of parties and their advocates—Absence of the latter due to the strike action proclaimed by the Cyprus Bar Council inviting its members to abstain from attending to their duties before the Courts—Applications for reinstatement of the recourses—And application by Bar Council to be heard as amicus curiae in the matters under consideration—Principles on which a party may be heard as amicus curiae—Bar Council not disinterested in the issues under*

10 *consideration—They cannot be heard as amicus curiae.*

15 Following the dismissal by the Court of the above recourses because of the absence of the parties and their advocates applications were made for the reinstatement of the recourses. The absence of advocates was due to the strike action proclaimed by the Cyprus Bar Council inviting its members to abstain from attending to their duties before the Courts on the 21st December, 1984.

20 Before embarking on the hearing of the applications for reinstatement, a team of advocates, headed by the Chairman of the Bar Council, moved the Court to hear the Bar Council in the matters under consideration as amicus curiae.

*On the application of the Bar Council:*

*Held*, that no one, other than a party to the proceedings, can be heard as of right; that the Court has discretion to hear someone other than a party, either on its own motion or at the request of the latter; that the jurisdiction is not a substitute for either joinder or intervention; that it is primarily intended to afford to a disinterested party an opportunity either to straighten the record or in the case of the Attorney-General, to voice views from the impersonal standpoint of the general public; that a party with a direct interest in the outcome of the immediate dispute will not be heard as *amicus curiae*; that occasionally parties with a direct interest in the dispute who would ordinarily be entitled to be joined as parties but with no institutional right to representation, are invited to be heard as *amicus curiae*, as was the case with the Disciplinary Board; that these cases are exceptional, explicable by reference to the inherent jurisdiction of the Court to regulate proceedings before it, including power to safeguard a right for representation to everyone directly interested in the dispute in the absence of procedural regulation; that in no reported case was anyone heard as *amicus curiae* in a matter pertaining to the conduct of a party in the proceedings; that from whatever angle the nature of the interest of the Bar Council in the applications for reinstatement, is examined, it is direct, immediately relevant to the reasons of absence of the advocates of the applicants; that, consequently, they are not disinterested in the issues under consideration in circumstances that might justify the Court to invite them to air their views from a standpoint distant from the immediate litigation, solely designed to afford them an opportunity to illuminate exposition of the legal principle from an angle that might otherwise remain obscure; and that, therefore, it is inappropriate for the views of the Bar Council to be invited in matters at issue in the application for reinstatement.

*Application dismissed.*

Cases referred to:

- Vorkas v. Republic* (1984) 3 C.L.R. 87;
- Josephides v. Republic*, 2 R.S.C.C. 72 at p. 75;
- Theodorides and Others v. Ploussiou* (1976) 3 C.L.R. 319;
- 5    *Pitsillos v. C.B.C.* (1982) 3 C.L.R. 208 at pp. 214, 217;
- Pieris v. Republic* (1983) 3 C.L.R. 1054;
- Nicolaides v. Yerolemi* (1984) 1 C.L.R. 742;
- Cheall v. Apex* [1983] 1 All E.R. 1130 (H.L.);
- Chokolingo v. A.G. of Trinida* [1981] 1 All E.R. 244;
- 10    *Gouriet v. Union of Post Office Workers* [1977] 3 All  
      E.R. 70 (H.L.);
- Holy See of Kitium v. Municipal Council of Limassol*,  
      1 R.S.C.C. 15;
- Mayor, Deputy Mayor, The Municipal Counsellors and*  
15    *Townsmen of Famagusta v. Stylianou*, 2 R.S.C.C. 30;
- Tyllirou v. Tylliros*, 3 R.S.C.C. 21;
- Kyriakides v. Council for Registration of Architects and*  
      *Civil Engineers* (1965) 3 C.L.R. 617;
- Messaritou v. C.B.C.* (1972) 3 C.L.R. 100;
- 20    *Constantinides v. Electricity Authority of Cyprus* (1982)  
      3 C.L.R. 387;
- In re XZ An Advocate* (1972) 1 C.L.R. 19;
- F.G. An Advocate* (1973) 1 C.L.R. 19;
- A.E. Pandelides, Advocate v. Paphiti and Another* (1967)  
25    1 C.L.R. 281;
- In re C.D. An Advocate* (1969) 1 C.L.R. 376;
- In re A.B. An Advocate* (1969) 1 C.L.R. 388;
- In re C.H. An Advocate* (1969) 1 C.L.R. 561;

*In re X.W. An Advocate* (1980) 1 C.L.R. 187;

*In re X.Y. An Advocate* (1981) 1 C.L.R. 401.

### Application.

Application by the Cyprus Bar Council to be heard as *amicus curiae* in the applications for reinstatement of the recourses. 5

*A. Liatsos* for K. Michaelides, for applicant  
in Case No. 416/84.

*A. S. Angelides*, for applicant in Case No. 538/84.

*M. Spanos*, for applicant in Case No. 560/84. 10

*D. Papachrysostomou*, for applicant in  
Case No. 607/84.

*G. Erotocritou (Mrs.)*, Counsel of the Republic,  
for respondent in Case No. 416.

*R. Gavrielides*, Senior Counsel of the Republic, for  
respondent in Case Nos. 538/84, 560/84  
and 607/84. 15

*Cur. adv. vult.*

PIKIS J. read the following judgment. The four recourses pending for reconsideration in proceedings for reinstatement were originally fixed before the Court on the 21st December, 1984. They were dismissed because of the absence of the parties and their advocates. The reasons for dismissal appear in the decision of the Court given the following day (1). In the judgment it is noted the absence of advocates was, in all probability, due to the strike action proclaimed by the Cyprus Bar Council inviting its members to abstain from attending to their duties before the Courts on 21st December, 1984. Their absence was found to be unjustified and inexcusable; and in view of the unexplained absence of their clients as well, the cases were dismissed. 20  
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(1) *Rousos v. Republic* (1984) 3 C.L.R. 1437

Separate applications were made in each case for the reinstatement of the recourses that came up for hearing on 9.2.1985. Appeals taken against the judgment of the Court in two of the four recourses were dismissed on 8.2.1985  
5 (1). It was held that in view of the applications for reinstatement the matter is in the hands of the Court of first instance and in consequence this Court remained seized of the matter, a fact rendering the appeals premature.

10 Before embarking on the hearing of the applications for reinstatement, a team of advocates, headed by the Chairman of the Bar Council, moved the Court to hear the Bar Council in the matters under consideration as *amicus curiae*. Mr. Christofides applied to the Court to extend  
15 them an audience in exercise of what he termed the traditional jurisdiction of the Court to hear representations in a judicial proceeding from someone other than the parties in the capacity of friends of the Court (*amicus curiae*). It was made clear that the Bar Council does not invoke any right to be heard in the matter, but merely brings to the  
20 notice of the Court their wish to be heard, if the Court so deems appropriate in the exercise of its discretionary power to hear non parties to the suit. *Amicus curiae* is in the legal context a term of art employed to signify the jurisdiction of the Court to hear someone other than a  
25 party to the proceedings. Their interest in the proceedings stems from their duty to consider all matters affecting the legal profession and in particular their right under s. 24(1) (a) of the Advocates Law, Cap. 2, "to maintain the honour and independence of the Bar and its defence in relation  
30 to the judiciary and the executive". Reference was made to the definition of *amicus curiae* given in a number of law dictionaries in order to indicate the nature of the jurisdiction and furnish some illustrations of its exercise  
35 (2). As counsel acknowledged, these definitions do not readily lend support to the exercise of the jurisdiction to hear the Bar Council as *amicus curiae*, because of the stress laid on the necessary lack of interest in the imme-

(1) *Rousos and Another v. The Republic* (1985) 3 C.L.R. 119.

(2) In particular counsel referred to the definition of *amicus curiae* in the law dictionaries of Radin, 2nd Ed., p. 17; Words and Phrases Legally Defined by John Saunders, Vol. 1, p. 80; Black's Law Dictionary, p. 107 and Osborn's Law Dictionary, 2nd Ed., p. 26.

diate dispute to support the invitation of a party to be heard in the capacity of *amicus curiae*. A common illustration of the invocation of the jurisdiction is where a member of the Bar, present in Court, but unconnected with the case, rises in order to draw the attention of the Court to an erroneous perception of a matter, usually a point of Law. Perhaps the definition supplied in the law lexicon—*Words and Phrases*—principally deriving from the appreciation of the jurisdiction by Canadian Courts is broadly indicative of the nature of the jurisdiction:

“ ‘*Amicus curiae*... is one who as a bystander, where a Judge is doubtful or mistaken in a matter of law, may inform the Court. In its ordinary use the term implies the friendly intervention of counsel to remind the Court of some matter of law which has escaped its notice and in regard of which it is in danger of going wrong’. *Grice v. R.*, (1957) 11 D.L.R. (2d) 699, per Ferguson, J., at p. 702 (Ont. S.C.)”.

In the United States *amicus curiae* has a wider connotation as may be gathered from the definition given in *Black's* law dictionary (1). In some respects the exercise of the jurisdiction is formalized in the case of a party with a strong interest or views on a matter and it is procedurally regulated. It is somewhat akin to the procedure of joinder of a party in extant proceedings.

The Bar Council is not seeking to intervene in the proceedings, as Mr. Christofides informed with no equivocation. Administrative law recognizes a right to an interested party, not joined in the proceedings, to intervene on his motion, a subject I had occasion to discuss at length in *Vorkas and Others v. The Republic* (2) treading along the lines earmarked by our case law (3). Intervention in administrative law is in many respects analogous to the joinder of parties in civil proceedings regulated by the

(1) Page 75.

(2) (1984) 3 C.L.R. 87.

(3) *Josephides v. The Republic*, 2 R.S.C.C. 72, 75; *Theodorides and Others v. Ploussiou*, (1978) 3 C.L.R. 319; and *Pitsillos v. C.B.C.* (1982) 3 C.L.R. 208, 214, 217).

Civil Procedure Rules (1). It is the first time I come across an application of the kind here examined and took time to look into decided cases for any guidance that may be available. The exercise was fruitful as I was able to trace  
 5 a number of cases that point to circumstances under which the jurisdiction may be validly invoked.

One may begin by asserting that there is no right on the part of anyone other than the parties to be heard in  
 10 judicial proceedings. The exercise of the right of audience is regulated by rules of Court and is subject to the inherent jurisdiction of the Court to regulate proceedings before it. Representation is limited to the parties in the interest of  
 15 finality of proceedings. Also it is a necessary safeguard for the protection of the rights of the parties to the cause by eliminating the possibility of the issues in the case being subordinated either to a wider issue or dispute or principles that have no immediate relevance to the proceedings. In this case three of the applicants welcomed the application of the Bar Council while the fourth objected to it.

20 The principal object of the judicial process is to provide machinery for the resolution of a dispute between parties who join issue thereto in the interest of law enforcement and the efficacy of the law. The Court is primarily concerned to adjudicate upon the rights of the disputants.  
 25 As a corollary, a judgment of the Court is ordinarily binding upon the parties and their privies in both civil and administrative law (2).

Examination of matters other than those directly in issue may easily deflect the course of justice from its primary  
 30 purpose to bring judgment to bear on the dispute of the parties. It has been judicially proclaimed that due process implies that the law will be finally declared in proceedings between the parties (3). The decision in *Cheall v. Apex* [1983] 1 All E.R. 1130 (H.L.), establishes that the interest  
 35 of third parties in the principle of law at issue in a legal

(1) Ord. 9, r. 10.

(2) *Pieris v. The Republic* (1983) 3 C.L.R. 1054;  
*Conclusions of the Greek Council of State 1929-1959*, pp. 91 et seq.; Kyriacopoulos, *Greek Administrative Law*, 4th Ed., Vol. 6, p. 157 et seq; *Nicolaides v. Yerolami* (1984) 1 C.L.R. 742.

(3) *Chokelingo v. A.G. of Trinida* [1981] 1 All E.R. 244 (P.C.).



proceeding is no reason for affording them a right of audience. Contemplating the implications of relaxation of the existing rules on the right to be heard, it was stressed that if parties with a strong interest in the principle involved were given a right to be heard, it would be difficult to draw the line and refuse an audience to parties with a lesser interest. Natural justice, it was pointed out, does not, under the adversarial system of justice, require recognition of a right to third parties with an interest in the legal issue to be heard in the matter. I may add the same applies to inquisitorial proceedings respecting a non party, that is, a party other than interested parties and interveners.

The nature of the jurisdiction to hear someone in the capacity of *amicus curiae*, so far as I have been able to ascertain from the law reports, has not been adverted to in any decided cases. Some light is thrown on the nature of the jurisdiction by consideration of its exercise in several cases. The Attorney-General has often been invited to appear as *amicus curiae* in cases where the legal issues raised were of far reaching effect and affected a particular interest of the public in the elicitation and application of the law. No doubt the invitation was extended because of the constitutional position of the Attorney-General as the repository of rights vested in the public—*Gouriet v. Union of Post Office Workers* [1977] 3 All E.R. 70 (H.L.). It appears that the position of the Attorney-General also entitles the holder to intervene in proceedings raising questions of public policy (1). On very many occasions the Attorney-General was invited to voice his views as *amicus curiae* in matters of a diverse nature, but always of particular interest to the general public(2).

Though the jurisdiction to hear someone other than the parties appears to have been originally confined to disin-

(1) Halsbury's Law of England, 4th Ed., Vol. 8, para. 1274.

(2) See, *inter alia*, *See of Kitium v. Municipal Council of Limassol*, 1 R.S.C.C. 15; *The Mayor, The Deputy Mayor, The Municipal Councillors and The Townsmen of Famagusta v. Damianos Stylianou*, 2 R.S.C.C. 30; *Myrianthi C. Tyllirou v. Charalambos C. Tylliros*, 3 R.S.C.C. 21; *Kyriakides v. The Council for Registration of Architects and Civil Engineers* (1985) 3 C.L.R. 617; *Mesaritou v. The Cyprus Broadcasting Corporation* (1972) 3 C.L.R. 100.

5 interested bystanders, an exception was made in the case of the Attorney-General because of his constitutional position explained above. But in the case of the Attorney-General too he must have no direct interest in the immediate out-  
10 come of the judicial cause, as may be the case where the rights of the State as a corporate entity are at issue. In that case he can only be heard as a legal representative of the State. The appearance of the Attorney-General as *amicus curiae* is only justified when the principle at issue is of a  
15 special interest to the general public.

The jurisdiction to hear someone other than a party, as *amicus curiae*, has not been confined to the reception of the views of the Attorney-General. Before the amendment (1) of section 17 of the Advocates Law—Cap. 2—the Court  
20 often heard counsel as *amicus curiae* in proceedings to review decisions of the Advocates Disciplinary Board initiated on the motion of the Supreme Court. As may be gathered from the record of appearances before the Supreme Court, counsel were heard as “*amicus curiae*” for the Disciplinary  
25 Board” (2). Evidently the jurisdiction to hear someone as *amicus curiae* was employed to afford the Disciplinary Board an opportunity to be heard in a matter of direct concern to it in the absence of procedural entrenchment of such right. *In Re X An Advocate* (1972) 1 C.L.R. 19, it  
30 seems that counsel appeared as of right on behalf of the Attorney-General to support a decision of the Disciplinary Board. In the same case the Court invited counsel to appear as *amicus curiae* and present the case before the Court, a step repeated in *F. G. An Advocate* (1973) 1 C.L.R. 19.

35 Only on one occasion, as far as I have been able to trace, was the Bar Council represented as *amicus curiae* in proceedings before the Court, namely, in *A. E. Pandelides. Advocate v. Emine Rustem Moustafa Paphiti and Another* (1967) 1 C.L.R. 281. The circumstances under which the Bar Council appeared are, according to the report, uncertain and in the end the Court did not find it necessary to

(1) The law was amended by s.8 of Law 40/75.

(2) See *In Re C.D. An Advocate* (1969) 1 C.L.R. 376; *In Re A.B. An Advocate* (1969) 1 C.L.R. 388; *In Re C.H. An Advocate* (1969) 1 C.L.R. 561; *In the matter of X.W. An Advocate* (1980) 1 C.L.R. 187; *In Re X.Y. An Advocate* (1981) 1 C.L.R. 401

hear counsel appearing for the Bar Council. The appeal turned on an order of the District Court adjudging an advocate to pay the costs of the proceedings. To my comprehension the case does not establish a precedent nor is it suggestive of the compass of the jurisdiction other than that the Court may, in a proper case, invite the Bar Council to be heard as *amicus curiae*. 5

To my mind the principles emerging from examination of the exercise of the jurisdiction to hear someone as *amicus curiae* and principles relevant thereto, are briefly the following:- 10

- (a) No one, other than a party to the proceedings, can be heard as of right.
- (b) The Court has discretion to hear someone other than a party, either on its own motion or at the request of the latter. 15
- (c) The jurisdiction is not a substitute for either joinder or intervention. It is primarily intended to afford to a disinterested party an opportunity either to straighten the record or in the case of the Attorney-General, to voice views from the impersonal standpoint of the general public. A party with a direct interest in the outcome of the immediate dispute will not be heard as *amicus curiae*. 20 25
- (d) Occasionally parties with a direct interest in the dispute who would ordinarily be entitled to be joined as parties but with no institutional right to representation, are invited to be heard as *amicus curiae*, as was the case with the Disciplinary Board. These cases are exceptional, explicable by reference to the inherent jurisdiction of the Court to regulate proceedings before it, including power to safeguard a right for representation to everyone directly interested in dispute in the absence of procedural regulation. 30 35

The above statement of principles must be supplemented by the following addendum. In no reported case was any-

one heard as amicus curiae in a matter pertaining to the conduct of a party in the proceedings.

I am clearly of opinion application of the above principles to the request of the Bar Council to be heard as amicus curiae must necessarily result in its dismissal. Although the Bar Council did not specify the matter or matters in respect of which they wish to be heard, obviously they are concerned with the justification of the absence of the advocates of the parties and the reasons for such absence in view of the call of the Bar Council to advocates to abstain from appearing before the Courts of justice on 21st December, 1984, described in my judgment of 22nd December, 1984, as a form of strike action. In the affidavits filed in support of the four applications for reinstatement, it is explicitly stated that the advocates of the parties failed, omitted or refused to attend the Court on that date in response to the call of Bar Council. From whatever angle we examine the nature of the interest of the Bar Council in the applications for reinstatement, it is direct, immediately relevant to the reasons of absence of the advocates of the applicants. Consequently, they are not disinterested in the issues under consideration in circumstances that might justify the Court to invite them to air their views from a standpoint distant from the immediate litigation, solely designed to afford them an opportunity to illuminate exposition of a legal principle from an angle that might otherwise remain obscure. And their application does not change complexion by the fact that I am not in the proceedings for reinstatement concerned to review the validity, soundness or correctness of my judgment of 22nd December, 1984 (such a right vests only in the Court of Appeal). Their interest is just as directed, for the reasons indicated, in matters raised by the applications for reinstatement.

Guided by the principles sought to be elicited in this judgment and for the reasons indicated above, I consider it inappropriate to invite the views of the Bar Council in matters at issue in the applications for reinstatement. I shall presently proceed to hear argument in support of the applications for reinstatement.

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*Order accordingly.*