

1987 April 28

(PIKIS J)

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE INSTITUTE OF CERTIFIED PUBLIC
ACCOUNTANTS OF CYPRUS AND OTHERS,

Applicants,

v

THE REPUBLIC OF CYPRUS, THROUGH
THE CENTRAL BANK OF CYPRUS,

Respondent

(Case No 169/86)

*Recourse for annulment — Right of audience — Application by person not made
an interested party in the proceedings claiming a right of audience —
Principles applicable*

Natural justice — Right to be heard

5 *Constitutional Law — Right to a public and fair hearing in the determination of
one's civil rights and obligations — Constitution, Art 30 2*

*The minimum rights associated with the exercise of the aforesaid right —
Constitution, Art 30 3*

10 By the above recourse the Institute of Certified Public Accountants of
Cyprus challenges the validity of the respondent's refusal to accept an
application for the issue of shares on the ground that such application was not
submitted by an advocate

15 The fact of the recourse depends on judicial pronouncement on the
question of constitutionality of section 2(1) of the Advocates Law (as amended
by section 2 of Law 98/84) and in particular, that part that precludes anyone
other than an advocate from assuming any competence in relation to the
preparation, revision, amendment of the memorandum and articles of
association of a company or any other matter associated with or incidental
thereto

20 The Cyprus Bar Association, which was not made an interested party in the
proceedings, filed the present application claiming a right of audience in the
matter. Neither the applicants nor the respondents raised objection to the
application

Held allowing the application (1) Acknowledgment of the propriety of the application does not absolve the Court of the duty to decide whether it is warranted in law

(2) Natural justice requires that every party likely to be affected by the outcome of a judicial cause or matter should be afforded proper opportunity to be heard and put his case before the Court This rule finds expression in Art 30 2 of the Constitution Moreover, Art 30 3 details the minimum rights associated with the exercise of the fundamental right safeguarded by the preceding paragraph Undoubtedly, section 2(1) of the Advocates Law confers civil rights to the members of the Cyprus Bar Association that they are entitled to defend in proceedings before every Court of Law

(3) A series of decisions of the Supreme Court in the exercise of its revisional jurisdiction acknowledge a right to every party directly interested in the outcome of a case to take part in the proceedings in such manner as the justice of the case requires

(4) The professional interests of the members of the Cyprus Bar Association, primarily financial, are directly at issue in the recourse Consequently the professional body representing them is legitimized in the pursuit of the defence of their rights

(5) In the light of the above the application is sustained

Application granted

Cases referred to

Vorkas and others v The Republic (1984) 3 C L R 87.

Republic v Nissiotou (1985) 3 C L R 944.

Theodossiadou and Others v The Republic (1986) 3 C L R 178. 25

Pitsillos v C B C (1982) 3 C L R 208

Application.

Application by the Cyprus Bar Association to be heard in pending proceedings before the Court whereby the constitutionality of section 2(1) of the Advocates Law, Cap 2 (as amended by section 2 of Law No. 98/84) is challenged. 30

A.S. Angelides, for the applicants.

L. Demetriades, for the respondents - applicants.

Y. Lazarou, for the respondent Central Bank.

Cur. adv. vult. 35

3 C.L.R. Institute of Cert. Accts v. Republic

PIKIS J read the following judgment The central, if not the sole issue in the proceedings, is the constitutionality of section 2, subsection (1) of the Advocates Law (as amended by section 2 of Law 98/84), in particular, that part that precludes anyone other than an advocate from assuming any competence in relation to the preparation, revision, amendment of the memorandum and articles of association of a company or any other matter associated with or incidental thereto As a matter of fact the fate of the recourse is dependant on judicial pronouncement on the question of constitutionality of the pertinent provisions of the law. since the sub judge decision refusing the issuance of shares on the application of applicants, accountants, is founded on the relevant provisions of section 2(1) of the Advocates Law The Central Bank of Cyprus acting on legal advice refused to accept an application for the issue of shares submitted by accountants for the reason that it did not originate from and was not submitted by an advocate

The Cyprus Bar Association was not made an interested party in the proceedings and no notice of the applications was given them On learning of the pendency of the proceedings they applied to be heard in the matter claiming a right of audience The application is founded on the provisions of the Supreme Constitutional Court Rules notably, Rules 13, 17, 18 and 19 and the inherent powers of the Court

Neither the applicants nor the respondents raised objection to the application acknowledging that it is fair that they be given an opportunity to be heard in the cause considering that the members of the Association have a direct interest in the outcome of the proceedings Acknowledgment of the propriety of the application does not absolve the Court of the duty to decide whether it is warranted in law To this end I applied myself guided by the fundamental precepts of justice, relevant constitutional provisions and our case law Natural justice requires that every party likely to be affected by the outcome of a judicial cause or matter, should be afforded proper opportunity to be heard and put his case before the court Of course the interest at risk must be direct as well as the prejudice likely to be occasioned thereby This rule of natural justice finds expression in Art 30 2 of the Constitution that safeguards a fair and public hearing in the determination of every one's civil rights and obligations Undoubtedly, section 2(1) of the Advocates Law confers civil rights to the members of the Cyprus Bar Association that they are entitled to defend in proceedings

before every court of law. Moreover, paragraph 3 of Article 30 details the minimum rights associated with the exercise of the fundamental right safeguarded by the preceding paragraph and requires, inter alia, that notice be given to every party whose civil rights or obligations are in issue in any judicial proceedings. 5

A series of decisions of the Supreme Court in the exercise of its revisional jurisdiction acknowledge a right to every party directly interested in the outcome of a case to take part in the proceedings in such manner as the justice of the case requires. In *Vorkas and Others v. The Republic** the case law on the subject is reviewed 10 and the right of a party directly interested in the proceedings to take part thereto, is acknowledged. In the same case reference is made to the nature of the interest necessary to justify the participation of the third party, whereas in a subsequent decision of the Supreme Court notably the *Republic v. Nissiotou*** it is 15 affirmed that the intervention of a third party can only be for the purpose of supporting the decision. Rightly so for any other approach to the matter might lead to by-passing the mandatory provisions of paragraph 3 of Article 146 that enjoins that challenge to administrative action can only be mounted within 75 days from 20 its communication. Lastly, in *Theodossiadou and Others v. The Republic****it was pointed out that the procedure for appearance in the capacity of amicus curiae is no substitute for the right to appear as an interested party in proceedings of judicial review of administrative action. 25

One has only to contemplate the effects that a declaration of unconstitutionality of the relevant enactment would have on the interest of members of the Cyprus Bar Association, to realize that the Cyprus Bar Association has every right to appear in the proceedings. The professional interests of its members, primarily 30 financial, are directly at issue and on that account they are entitled to be heard in the cause. Consequently, the professional body representing them, the Cyprus Bar Association, is legitimized in the pursuit of the defence of their rights. ****

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

** (1985) 3 C.L.R. 944

*** (1986) 3 C.L.R. 178.

**** See *Pitsillos v. C.B.C* (1982) 3 C.L.R. 208, for a discussion of the prerequisites necessary for appearance by a representative body.

3 C.L.R. Institute of Cert. Accts v. Republic Pikiis J.

In the light of the above the application is sustained The Cyprus Bar Association will be at liberty to file within 15 days a separate opposition in support of the sub judge decision

The case is fixed for oral hearing on 13th June, 1987 at 9 15
5 a m

Application granted