

1983 January 15

[LORIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

- 1. ANDREAS PAPACHARALAMBOUS,
- 2. IOANNIS EROTOCRITOU, —
- 3. CHARIS STAVRAKIS,
- 4. PAVLOS ANGELIDES,

*Applicants.*

v.

THE NICOSIA LOCAL BAR ASSOCIATION,

*Respondent.*

(Case No. 135/82).

*Act or decision in the sense of Article 146.1 of the Constitution—  
 —Local Bar Association—Is not “an organ, authority or person  
 exercising any executive or administrative authority” in the  
 sense of the above Article—Acts or decisions of such an association  
 not within the domain of public law—They lack the character  
 of “executory act” and they cannot be made the subject of a  
 recourse under the above Article.*

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*Advocates—Local Bar Associations—They are not organs or authorities  
 exercising “executive or administrative authority” in the sense  
 of Article 146 of the Constitution.*

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The four applicants, all practising advocates, by means of  
 this recourse challenged the validity of the elections of the  
 respondent Local Bar Association which were held on 5.2.1982.

*On the question whether the act complained of could be made  
 the subject-matter of a recourse under Article 146 of the Consti-  
 tution:*

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*Held, that an association of advocates under the Advocates  
 Law and in particular the respondent Local Bar Association  
 is an association of professional people promoting their own  
 professional interests but they are not by their very nature organs*

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or authorities exercising "executive or administrative authority" in the sense of Article 146 as there is neither express legislative provision rendering the functions of the association in question a matter of public law, (see *Elias Petrou and others v. The New Cooperative Credit Society of Karpashia*, 3 R.S.C.C. 58) nor does it present elements such as state control over such body, or influence of the principles of public law on its organs and functions which would "classify the characterisation of its functions as public service"—(see Conclusions of the Greek Council of State 1929–1959 at pp. 120–121); that since the respondent Local Bar Association is not "an organ, authority or person exercising any executive or administrative authority" it follows that any act or decision of the respondent not being within the domain of public law lacks the character of "executory act" and therefore it is not justiciable.

*Held*, further, if the respondent was "an organ, authority or person exercising executive or administrative authority" in the sense of Article 146 of the Constitution there is no existing legitimate interest of the applicants adversely and directly affected (as envisaged by Article 146) by the aforesaid act or decision of the respondents.

*Application dismissed.*

Cases referred to:

- HjiKyriacou v. HjiApostolou*, 3 R.S.C.C. 89;  
25 *Republic v. M.D.M. Estate Developments Ltd.* (1982) 3 C.L.R. 642;  
*Charalambous v. Republic* (1982) 3 C.L.R. 403;  
*Chiratis v. Republic* (1982) 3 C.L.R. 540;  
*Tekkis and Another v. Republic* (1982) 3 C.L.R. 680;  
30 *Petrou and Others v. The New Co-Operative Credit Society of Karpashia*, 3 R.S.C.C. 58.

**Recourse.**

Recourse against the elections of the respondent Nicosia Local Bar Association held on 5.2.1982.

- 35 *P. Angelides*, for the applicants.  
*L. Papaphilippou with Chr. Triantafyllides and Chr. Chri-stophides*, for the respondents.  
*L. Papaphilippou with Chr. Triantafyllides and Chr. Chri-stophides*, for the interested parties.

40 *Cur. adv. vult.*

LORIS J. read the following decision. The four applicants in the present recourse challenge the validity of the elections of the respondent Local Bar Association held on 5.2.82, on the following grounds of law set out in the recourse:

- “1. Those who voted at the meeting included a number of persons who did not qualify to elect or to be elected on the basis of the relevant legislation. 5
2. The notices envisaged by law before the summoning of the meeting were not given and the voting was not secret.
3. The meeting was held in such a manner and at such place and time that deprived applicants and other advocates of the right to elect or to be elected. 10
4. The rules of sound administration and other rules of administrative law were not observed at the meeting.”

The respondents applied for “further and better particulars” in respect of the legal points on which the recourse is based. 15

The applicants on furnishing the particulars requested, stated *inter alia*, in connection with advocates “who did not qualify to vote at the meeting” that they were all the voters as they had not taken out their annual licence, with the exception of the candidates. 20

The respondents before filing their opposition applied to the Court invoking the provisions of Art. 134.2 of the Constitution for the dismissal of the present recourse as being “prima facie frivolous”, relying on the following grounds set out in their said application: 25

- “(a) The recourse does not disclose an administrative act within the ambit of Art. 146 of the Constitution.
- (b) The subject of the recourse does not fall within the domain of public law and therefore this Court on its revisional jurisdiction lacks authority and/or power to adjudicate upon the present recourse. 30
- (c) Even if the subject of the recourse constituted an administrative act envisaged by the provisions of Art. 146 of the Constitution, which was within the domain 35

of public law, the applicants have no 'existing legitimate interest'.

- 5 (d) The Local Bar Association of Nicosia is not an organ, authority or person exercising any executive or administrative authority in the sense of Art. 146 of the Constitution.
- (e) The Local Bar Association mentioned in the recourse is not the appropriate litigant or it has no locus standi.
- 10 (f) The subject of the recourse is electoral act of the advocates of Nicosia District, an act which cannot be the subject of a recourse according to Art. 146 of the Constitution."

The aforesaid application of the respondents was opposed by the applicants in the main recourse who maintained that:

- 15 "A. Bar Associations are public corporate bodies (Νομικά πρόσωπα Δημοσίου Δικαίου).
- B. The elections of the Bar Associations are administrative acts, and/or acts justiciable under Art. 146 of the Constitution.
- 20 C. Each advocate has an existing legitimate interest.
- D. The proper party to the present recourse is the relevant Bar Association."

25 On the 2nd December, 1982, after hearing the application under Article 134.2 of the Constitution, the applicants (respondents in the main recourse) withdrew their application under Art. 134.2 and invited the Court to treat the grounds raised by the withdrawn application, as well as the argument advanced therein as preliminary objections in point of law; the respondents (applicants in the present recourse) as well as the interested parties consented to such a course being adopted.

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As a result the application under Art. 134.2, was dismissed on 2.12.82.

35 Today I shall proceed to pronounce on the preliminary legal points, set out above, as the respondents, the applicants and the interested parties have unanimously invited me to do.

Learned counsel for the respondents elaborated at length on the above mentioned six preliminary points and classified the objections into three broad categories as follows:

1. The Local Bar Association of Nicosia is not an organ, authority or person exercising any executive or administrative authority; therefore—he maintained—its acts or decisions are not falling within the ambit of Art. 146 of our Constitution. 5
2. (a) The acts of the Local Bar Association challenged by the applicants by virtue of the present recourse are not acts of an executory character because they are not falling within the domain of Public Law. 10  
(b) The acts complained of are not executory administrative acts, but simply electoral acts of the Ordinary General Meeting of the Local Bar Association where the advocates voted; it was the “will” of the advocates that was expressed thereby, counsel maintained, not the “will” of the administration. 15
3. The applicants have no existing legitimate interest as envisaged by Article 146.2 of the Constitution. There is nowhere in the recourse, counsel submitted, any allegation to the effect that the four applicants were candidates at the challenged elections of 5.2.1982, nor even an allegation to the effect that the applicants are advocates. 20  
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Counsel of the interested parties indorsed submissions of counsel for respondents.

Counsel for applicants in the main recourse, submitted that the Local Bar Association is a public corporate body (Νομικό Πρόσωπο Δημοσίου Δικαίου) and as such exercises executive or administrative authority as envisaged by Art. 146 of our Constitution. The Ordinary General Meeting where the President and members of the Local Bar Association were elected—counsel submitted, is an organ of the Local Bar Association; as the association is public corporate body (Νομικό Πρόσωπο Δημοσίου Δικαίου) exercising executive or administrative authority, its acts being acts of executory nature according to Greek authorities he cited, (Dendia, Admi- 30  
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nistrative Law 5th ed. Vol. III pp. 277 and 279 and the decision of the Greek Council of State 995/40) can be challenged by means of a recourse under Art. 146 of our Constitution.

5 As learned counsel for applicants based his argument mainly on Greek Administrative Law and as Greek authorities have been frequently resorted to for guidance in matters of administrative law, I feel that I should deal first as briefly as possible with the legal aspect of this point viewed from the angle of the Greek Administrative Law; but at the same time I wish to lay  
10 stress on the fact that guidance deduced from Greek authorities is one thing, (quite useful and helpful I should say) whilst employment of Greek Statute Law as if it were part and parcel of Cyprus Law is quite a different matter, absolutely impermissible as apt to lead to confusion, to say the least, in our law.

15 There is no precise definition in Greek Law of a public corporate body (Νομικὸ Πρόσωπο Δημοσίου Δικαίου); further there is no definition of a “public corporate body exercising executive or administrative authority”; several characteristics have been isolated and quite a number of criteria have been  
20 suggested by various eminent Greek writers from which the necessary requisites may be debicted with a view to defining a public corporate body exercising executive or administrative authority, (vide *Stassinopoulos—Lessons of Administrative Law* 1957 ed. pp. 172–188, *Kyriacopoulos—Greek Administrative Law*, 4th ed. Vol. B (General Part) at p. 220, *Dendia—Administrative Law* 5th ed. Vol. A pp. 191, 193, 195), although such  
25 a definition would not have been conclusive and on occasions it might be proved unsatisfactory.

30 In the *Conclusions of the Greek Council of State 1929–1959* under the heading “Public Corporate Bodies” (ΝΟΜΙΚΑ ΠΡΟΣΩΠΑ ΔΗΜΟΣΙΟΥ ΔΙΚΑΙΟΥ) at p. 118, several characteristics of public corporate bodies which have been accepted by the Greek Council of State are given (p. 119) whilst the aiming of several objects are being enumerated which,  
35 have been accepted by the Council as falling within the objects of Public Corporate Bodies (pp. 119 and 120).

Finally, at the botton of p. 120 and at the beginning of the ensuing page the following are stated verbatim:

“Νομικὸν τι πρόσωπον δὲν δύναται νὰ θεωρηθῆ ὡς δημοσίου

δικαίου ἐὰν ἐκ τῶν κειμένων διατάξεων δὲν προκύπτῃ, ὅτι ἡ ἐπὶ τῆς ὀργανώσεως καὶ λειτουργείας του ἐπιρροή ἀρχῶν δημοσίου δικαίου εἶναι τόσοσ οὐσιώδης ὥστε νὰ ὑπάρχη τοιοῦτος βαθμὸς ἐξαρτήσεως ἀπὸ τὴν Πολιτείαν, δικαιολογῶν τὸν χαρακτηρισμὸν τοῦ ὑπ' αὐτοῦ ἐπιτελουμένου ἔργου. 5  
 ὡς δημοσίας ὑπηρεσίας: 1112(50), ἐὰν δὲν ὠπλίσθη τοῦτο διὰ τῶν προνομίων τοῦ δημοσίου δικαίου καὶ τῆς χρήσεως διοικητικῶν μεθόδων καὶ ἐὰν δὲν ὑπερβαινη ἡ ἐπ' αὐτοῦ ἀσκουμένη ἐποπτεία τὴν συνήθη ἐποπτείαν ἐπὶ τῶν νομικῶν προσώπων τοῦ ἰδιωτικοῦ δικαίου: 1112(50). Συνεπῶς, 10  
 δὲν ἀρκεῖ μόνον τὸ γεγονός ὅτι ἀπλῶς χαρακτηρίζεται ὑπὸ τοῦ νόμου ὡς νομικὸν πρόσωπον δημοσίου δικαίου: 1087 (46), οὐδ' ὅτι ἀπλῶς καὶ μόνον ἐπιβάλλεται ὑπὲρ αὐτοῦ εἰσφορὰ: 1072(48).

Νομικὸν πρόσωπον, τὸ ὁποῖον δὲν ἐπιτελεῖ δημοσίαν 15  
 ὑπηρεσίαν, οὐδὲ ἔχει ἀνατεθῆ αὐτῷ ἡ ἄσκησης διοικήσεως, οὔτε δὲ χαρακτηρίζεται ὑπὸ τοῦ νόμου ἢ πράξεως τῆς ἐκτελεστικῆς ἐξουσίας ὡς νομικὸν πρόσωπον δημοσίου δικαίου, δὲν ἀποτελεῖ νομικὸν πρόσωπον δημοσίου δικαίου: 356 (43), 191(44), ὡς δὲν ἀποτελεῖ καὶ τὸ νομικὸν πρόσωπον, 20  
 οὐ τὸν χαρακτηρισμὸν του ὡς νομικοῦ προσώπου δημοσίου δικαίου ἀποφεύγει ὁ συνιστῶν αὐτὸ νόμος καὶ τοῦ ὁποῖου ὁ σκοπὸς δὲν δύναται νὰ θεωρηθῆ ὡς ἀναγόμενος εἰς τὴν σφαῖραν τῶν καθηκόντων τῆς δημοσίας διοικήσεως: 1345 (49), 1830(50)....". 25

("A Corporate body cannot be considered as public body if from the existing provisions there does not appear that the influence of rules of Public law on its organisation and functions is so essential that there is such a degree of dependence on the State as to justify the classification of the service rendered by it as public service: 1112/50, if it has not been armed with privileges of public law and the use of administrative methods and if the supervision exercised on it does not exceed the usual supervision exercised on corporate bodies of private law: 1120/50. Therefore, 30  
 the fact that it is simply considered by the law as public corporate body is not enough: 1087/46, not even simply because a contribution is imposed in its favour: 1072/48. 35

Public body which does not exercise a public service,

and has neither been entrusted with the exercise of administration nor is it classified by the law or act of the executive power as a public corporate body does not constitute a public corporate body: 356/43, 191/44, as it does not  
5 constitute also the public body, whose classification as public corporate body is avoided by the introducing law and whose object cannot be considered as being within the sphere of the duties of public administration”).

From the above it is clear that in Greece a public corporate  
10 body (Νομικὸ Πρόσωπο Δημοσίου Δικαίου) is considered as such if it fulfils at least the following:

- (a) It is so termed by Law,
- (b) There is such a degree of control by the State over such  
15 body, due to the impact of the principles of public law on its organisation and functions, that classifies its functions as public service.

It is true that Greek authors classified Advocates Associations in Greece as Public Corporate Bodies (Νομικὰ πρόσωπα  
20 Δημοσίου Δικαίου); the aforesaid classification is undoubtedly based on the Decisions of the Greek Council of State, which has resolved the matter in the light of existing legislature in Greece which is reflected clearly in the wording of a relevant extract in one of its decisions:

25 “ Ἐπειδὴ, κατὰ τὸ ἄρθρον 180 τοῦ Κώδικος περὶ δικηγόρων, οἱ δικηγορικοὶ σύλλογοι ἀποτελοῦσι νομικὰ πρόσωπα δημοσίου δικαίου κατὰ δὲ τὸ ἄρθρον 214, τὸ Διοικητικὸν Συμβούλιον τοῦ Συλλόγου διοικεῖ καὶ διαχειρίζεται τὰς ὑποθέσεις ἐν γένει τοῦ συλλόγου καὶ ἐκτελεῖ τὰ διὰ τοῦ Κώδικος ἀνατεθειμένα αὐτῶ ἔργα. Ὅθεν αἱ πράξεις τοῦ Διοικητικοῦ  
30 Συμβουλίου αἱ ἀφορῶσαι εἰς θέματα διοικήσεως τοῦ συλλόγου, ὑπόκεινται εἰς τὸ ἔνδικον μέσον τῆς αἰτήσεως ἀκυρώσεως καθ’ ὃ πράξεις ἐκτελεσταὶ νομικοῦ προσώπου ἀσκοῦντος διοίκησιν... ” (Vide Decisions of the Greek Council of State 1954 Vol. Γ’ Σ.Ε. 1963/1954 (ὄλ.) pages 2449–2451).

35 (“Because, according to section 180 of the Advocates’ Code, Bar Associations constitute public corporate bodies and according to section 214 the Managing Council of the Bar Association, manages and administers the affairs



in general of Association and performs the acts imposed on it by the Code. Therefore the acts of the Managing Council referring to administrative matters of the Association are subject to the lawful measure of application for annulment since executory acts of a public corporate body exercising administrative.....”). 5

In this respect it must always be borne in mind that the aforesaid legislative provision is purely a Greek Enactment, which of course is not applicable in Cyprus.

Let us now revert to the Cyprus Law; the first two paragraphs of Article 146 of our Constitution read as follows: 10

“Article 146

1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of the Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person. 15 20
2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission”. 25

It was held as early as 1962 (*Achilleas HjiKyriacou v. Theologia HjiApostolou* 3 R.S.C.C. 89) that an “act or decision” in the sense of para. 1 of Article 146 is an act or decision in the domain only of public law. This principle was reiterated in a number of cases the most recent ones being *The Republic v. M.D.M. Estate Developments Ltd.* (1982) 3 C.L.R. 642; *Charalambides v. The Republic* (1982) 3 C.L.R. 403; *Panayiotis Chiratis v. The Republic* (1982) 3 C.L.R. 540; *Kyriacos Michael Tekkis and another v. The Republic* (1982) 3 C.L.R. 680. 30

Once it is clear that Article 146 of our Constitution is confined to matters of public law, I shall now proceed to consider the Advocates’ Law with particular reference to Local Bar Associations. 35

Advocates' Law Cap. 2, (as amended by Laws 42/61, 20/63, 46/70, 40/75, 55/78 and 71/81) regulates the admission and enrolment, practice and discipline of advocates, as well as the establishment of Local Bars, Committees, Bar Association and Bar Council; it further provides for pensions and other allowances to advocates. Section 24 of the law, as amended, sets out the power of the Bar Council, whilst s. 19 and 20 provide for the ordinary and extraordinary General Meetings of Local Bars.

10 In connection with Local Bars it is worth noting the provisions of s. 19(8) of the Law as amended which reads as follows:

“Subject to the provisions of this section and of para. (h) of sub-section (1) of s. 24 a Local Bar Committee may regulate its own functions and procedure, including the manner in which elections under sub-section (3) may be conducted and may levy, on the advocates practicing in the district of which it is the Local Bar Committee an annual subscription not exceeding the sum of £5.—”

20 It is significant to note that neither the Advocates' Law —as amended—nor any other Law or the Constitution expressly or otherwise term any association or organ established under the Advocates' Law, as public corporate body (Νομικὸν Πρόσωπον Δημοσίου Δικαίου).

25 Having considered the provisions of the Advocates' Law, I hold the view that an association of advocates under the Advocates Law and in particular the respondent Local Bar Association is an association of professional people promoting their own professional interests but they are not by their very nature organs or authorities exercising “executive or administrative authority” in the sense of Article 146 as there is neither express legislative provision rendering the functions of the association in question a matter of public law, (*Elias Petrou and others v. The New Cooperative Credit Society of Karpashia*, 3 R.S.C.C. 58) nor does it present elements such as state control over such body, or influence of the principles of public law on its organs and functions which would “classify the characterisation

of its functions as public service". (Conclusions of the Greek Council of State 1929-1959 at pp. 120-121).

Having found, for the reasons stated above, that the respondent Local Bar Association is not "an organ, authority or person exercising any executive or administrative authority" it follows that any act or decision of the respondent not being within the domain of public law lacks the character of "executory act" and therefore it is not justifiable. 5

But even if we were to assume that respondent was "an organ, authority or person exercising executive or administrative authority" in the sense of Article 146 of the Constitution is there any existing legitimate interest of the applicants adversely and directly affected (as envisaged by article 146) by the aforesaid act or decision of the respondents? 10 15

The answer is in the negative for the following reasons:

- (a) All four applicants nowhere in the recourse, the particulars of 31.8.1982, or the application, mention anything to the effect that they were candidates at the aforesaid elections or that they were practising advocates as envisaged by Article 11 of the Advocates' Law (as amended). 20
- (b) Even assuming that I were to take judicial notice that at least the fourth applicant is a practising advocate, as he did appear before me in the present proceedings, I am not allowed to assume either that he or anyone of the remaining applicants were practising advocates on the date of the election in the sense that they have taken out their annual licence, because, as in para. 1 of the particulars is stated verbatim: "those who voted and were not entitled to vote at the General Meeting were all the voters with the exception of the candidates;" and for all we know candidates were the persons alleged (in the body of the recourse) to have been elected whilst the four applicants, as already stated, are nowhere referred to as "candidates" in the elections. 25 30 35

For all the above reasons the present recourse is doomed to failure and it is accordingly dismissed.

In view of the fact that the original application of the respondents under Article 134.2 of the Constitution was withdrawn I shall refrain from making any order as to costs.

*Recourse dismissed. No order as to cost.*