

1985 November 14

[KOURRIS, J.]

IN THE MATTER OF ARTICLE 146
OF THE CONSTITUTION

CHRISTIANIKI ENOSIS KYPRION EPISTIMONON,

Applicant,

v.

THE REPUBLIC OF CYPRUS, THROUGH
THE COMMITTEE OF CINEMATOGRAPH
FILMS CENSORS,

Respondent.

(Case No. 307/85).

*Legitimate Interest—Article 146.2 of the Constitution—Re-
course by an Association—When does an Association have
a legitimate interest.*

The applicant, a club registered under the relevant law,
challenges by means of the present recourse the decision 5
of the Board of Cinematograph Films Censors to allow the
exhibition of the film "Papadistiki Compania".

The objects of the club are the following:

- (a) The preparation of the members of the Association
- to live a Christian life, (b) To live in accordance 10
- with the Christian values in the modern society, and (c)
- The close cooperation between its members and the Offi-
cial Church, to be under their spiritual guidance and to
place themselves at the service of the Official Church.

In support of applicant's contention that it has a legi- 15
timate interest to pursue the present recourse applicant's
counsel maintained that the film in question offends di-
rectly the Christian faith and indirectly subverses every
moral, national religious value and in consequence it

M. Philippidou (Miss), for E. Efstathiou, for the applicant.

A. Vladimirov, for the respondent.

Cur. adv. vult.

KOURRIS J. read the following judgment. This is a recourse against the decision of the Board of Cinematograph Films Censors allowing the exhibition of the film "Papadistiki Compania." 5

The applicants, Christianiki Enosis Kyprion Epistimonon, applied for the annulment of the decision of the respondents to allow the exhibition of the said film. 10

The applicants is a club registered under the relevant laws and its memorandum of association has been filed together with the written address of the applicants.

Counsel for the respondent raised the preliminary issue whether the applicants have a legitimate interest within the meaning of Article 146.2 of the Constitution to pursue the present recourse and as the applicants consented the Court proceeded to hear it before the hearing of the substance of the application. 15
20

The contention of counsel for the respondents is that the applicants have no legitimate interest because they are not prejudiced in a direct way but only in a general way like any other Orthodox Christian. He relied on the case of *Pantelouris and Others v. The Council of Ministers* (1985) 3 C.L.R. 852 and on certain decisions of the Greek Council of State. 25

On the other hand counsel for the applicants maintained that the film "Papadistiki Compania" offends directly the Christian faith and indirectly subverse every moral, national and religious value and in consequence it offends the moral interest of the objects of the members of the said club and consequently they have a legitimate interest within the meaning of Article 146.2 to pursue the present recourse. 30
35

The principles when an association or a club has a right to take part in proceedings of administrative nature were

expounded in the case of *Pitsillos v. C.B.C* (1982) 3 C.L.R. 208 and in the case of *Vorkas & Others v. The Republic* (1984) 3 C.L.R. 87.

5 The former case was decided by a Full Bench of the Supreme Court and at p. 215 Pikis, J. had this to say:

10 “The matter raised concerns the interpretation of Article 146.2 and its application to the facts of the case. The interest necessary to sustain a recourse is defined by Article 146.2. It requires that an existing
15 legitimate interest of the applicant be prejudicially affected as a result of the decision impugned. To be direct there must be an unbroken causative chain between the decision and the interest vindicated. There must be *legitimitio ad causum* in contrast to a general complaint of maladministration, to sustain a recourse. (See, *Kyriakos Chrysostomides v. Greek Communal Chamber*, 1964 C.L.R. 561, 567).”

And again at p. 215 Pikis, J. said as follows:

20 “.... On examination of Greek case law, a tendency is discernible to construe broadly and not restrictively the element of direct prejudice necessary to sustain a recourse for the review of an administrative act. (The subject is discussed in Tsatsos' 'Application for Annulment' 3rd edition pp. 54-57). In France the relaxation, it appears, has gone further though not to the extent of recognizing an *actio popularis*. We are not inclined to construe restrictively legal provisions conferring a right of recourse to the courts; on the contrary access must be as wide as the law may direct.
25 But we cannot ignore the mandatory constitutional provisions laying down that a right to judicial review accrues only where the right vindicated is directly affected as a result of the decision challenged. The antonym of 'direct' is 'indirect'. Indirect infers
30 that a right does not confer a right to judicial review. In Greece where the element of directness is similarly postulated, it was held that no right to a recourse ensues where the prejudice complained of emanates or results from the implications of a decision on the
35

rights of a third party. (See Tsatsos' (supra)). An association, on the other hand, can prosecute a recourse only if, as a result of the decision, the rights of the association as such or those of its members in their entirety as distinct from the rights of individual members, are affected by the decision. (See, inter alia, *Demetriou as Chairman of C.B.C. Staff Society v. The Republic*, 1 R.S.C.C. 99; *The Bar Association of Nicosia etc. v. The Republic* (1975) 3 C.L.R. 24; *Cyprus Police Association and Others v. The Republic* (1974) 3 C.L.R. 152)."

The latter case viz *Vorkas v. The Republic* was decided by Pikiis, J. sitting alone. He followed *Pitsillos v. The Republic* (supra) and at p. 89 said the following:

"In *Pitsillos v. C.B.C.* (1982) 3 C.L.R. 208 at pp. 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 legitimize 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 notices 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 directly financial. (See, Honorary Tome of the Greek Council of State 1929-1959, vol. 1, p. 379 and p. 375 respectively.)"

Again at p. 91 he said as follows:

"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."

and again at p. 93 had this to say:

5 "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."

10 It appears from the principles laid down by the afore-said two cases that the Court should examine the objects of the Association and whether the interests of the Association arising therefrom should be at risk or the interests of its members in their entirety, or a substantial portion of them, as distinct from the rights of its individual members, must be prejudicially affected by the decision in order to legitimize a recourse under Article 146.

The objects of the Association as they appear in their memorandum of association are three, the following:-

- 20 a) The preparation of the members of the Association to live a Christian life;
- b) To live in accordance with the Christian values in the modern society, and
- 25 c) The close cooperation between its members and the Official Church, to be under their spiritual guidance and to place themselves at the service of the Official Church.

30 In Greece it was decided in the case of the Council of State 3449/74 that certain Russian Associations whose members lived in Greece that they had a legitimate interest against the decision to unite all the sections of the cemetery for burials including Orthodox Russians. They held that the Association had a legitimate interest because the object of the Association was to preserve the cultural and moral standards of their faith. It thus appears that the interest at risk need not be financial. A legitimate interest can encompass interests other than directly financial. See; decision of the Council of State 1672/73.

35 In the cases of *Pitsillos* and *Vorkas* (supra) the interests of the Association were distinct in that it was not coinc:-

dent with the interest each member of the Association had
as a member of the public. Whereas, in the present case
the objects of the Association is the propagation of general
moral standards, shared by the community. The interests
of the Association are not separate or different from those 5
of individual members. Therefore, considering that members
of the public do not have in the absence of personal direct
interest, a right for the review of administrative action, the
Associaton to which they belong for the promotion of the
same general interests has no right either to seek the re- 10
view of the administrative action.

In the result the recourse is dismissed but with no order
as to costs.

*Recourse dismissed with
no order as to costs.* 15