

1978 July 4

[L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, MALACHTOS,
DEMETRIADES AND SAVVIDES, JJ.]

DEMOS ZENIOS AND ANOTHER,

Applicants,

v.

THE DISCIPLINARY BOARD SET UP UNDER THE
SPECIFIC DISCIPLINARY OFFENCES (INVESTIGATION
AND TRIAL) LAW, 1977 (LAW 3 OF 1977 AS AMENDED),

Respondent.

(Application Nos. 4/78 and 5/78).

Natural Justice—Incompatible functions—Combination of, in one person—Disciplinary Board set up under the Specific Disciplinary Offences (Investigation and Trial) Law, 1977 (Law 3 of 1977 as amended)—Counsel of the Republic appearing for the Prosecution in proceedings against the applicants before the said Board and as lawyer of the Board in certiorari proceedings before the Supreme Court—Whether appearance before the Supreme Court improper or contrary to any principles of Law.

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Certiorari—Prohibition—Leave to apply for—Proceedings before Disciplinary Board set up under Law No. 3 of 1977 (supra)—Prima facie good grounds for granting leave—Leave granted—Whether Supreme Court has jurisdiction to deal with certiorari and prohibition applications in connection with above proceedings.

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These were applications for leave to apply for orders of certiorari and/or prohibition in connection with certain proceedings before the Disciplinary Board set up under the Specific Disciplinary Offences (Investigation and Trial) Law, 1977 (Law No. 3 of 1977 as amended). At the commencement of the hearing counsel for the applicants raised a preliminary point objecting to the appearance before this Court, on behalf of the Disciplinary Board, of counsel who appeared in the proceedings before the Board. The Counsel to whose appearance the objection was taken was a counsel of the Republic in the Attorney-

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General's office. The objection was based on the fact that Counsel of the Republic appeared before the Disciplinary Board hearing applicants' cases on one occasion recorded as appearing for the prosecuting authority, and on another occasion as appearing for the Attorney-General but that, in any case, his submissions and stand taken showed that he was, in fact, appearing for the prosecution. Counsel for the applicant further submitted that in view of the fact that the chairman of the Investigating Committee, set up under section 4 of the Law, was a counsel of the Republic, the Chairman of the Disciplinary Board, appointed under section 8(1), was a Senior Counsel of the Republic, both in the Attorney-General's office, and in view of the functions of the Attorney-General both under sections 6(1)(2) and 9(3) of the Law, in fact the Attorney-General through the Law Officers was in substance the investigator, the prosecutor, the Judge and the legal adviser of the Judge at the same time and now also the lawyer of the Judge.

Regarding the application for leave counsel for the respondents, though conceding that at least some of the grounds raised were not frivolous and that there was an arguable case, invited the Court to hear the issue of jurisdiction of this Court to deal with these applications as a preliminary separate issue.

Held, (I) on the preliminary objection: That if there was any irregularity or mischief committed which would warrant a finding that there has been contravention of the rules of natural justice—and at this stage the Court expresses no view on this matter—it was committed in the proceedings before the Disciplinary Board; that in the circumstances of this case the appearance of counsel of the Republic for the Board can in no way be considered as improper or contrary to any principles of law or to be likely to have any adverse effect in the present proceedings before this Court which are quite distinct from those before the Board; and that, accordingly, this Court sees no valid reason for preventing him from so appearing.

(II) On the Application for leave: Held, (by majority A. LOIZOU, J. dissenting) that as in order to decide the issue of jurisdiction other issues, which go to the merits of the applications, such as the status of the organ concerned, a matter which is interwoven with the question of jurisdiction, will have to be decided, this Court should, at this stage, having been satisfied

that *prima facie* there are good grounds for doing so, grant the leave prayed for and decide the question of jurisdiction together with all relevant issues; and that, accordingly, the applicants will be granted leave to apply for orders of certiorari and prohibition within seven days from day. 5

Applications granted.

Cases referred to:

In re Tritoftydes, 17 C.L.R. 79.

Applications.

Applications for leave to apply for orders of certiorari and prohibition in connection with disciplinary proceedings before the Disciplinary Board set up under the Specific Disciplinary Offences (Investigation and Trial) Law, 1977 (Law 3 of 1977 as amended). 10

G. *Cacoyiannis* with E. *Pattichi* (Miss), for applicant in Application 4/78. 15

G. *Cacoyiannis* with P. *Ioannides* and E. *Pattichi* (Miss), for applicant in Application 5/78.

Cl. *Antoniades* and A. *Papasavvas*, Counsel of the Republic, for the Respondent Board in both applications. 20

July 4, 1978: The following decision of the Court was read by:

L. LOIZOU J. At the commencement of the hearing of these applications learned counsel appearing for the applicants raised a preliminary point objecting to the appearance before this Court on behalf of the section of the Disciplinary Board set up under s. 8 of Law 3 of 1977 as amended by Law 38 of 1977 and 12 of 1978, before which the hearing of the cases of the applicants (cases Nos. 1/78 and 2/78) have commenced, of counsel who appeared in those proceedings. 25
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The counsel to whose appearance the objection was taken is a counsel of the Republic in the Attorney-General's office.

Briefly, counsel's objection was based on the fact that counsel of the Republic appeared before the Section of the Disciplinary Board hearing applicants' cases on one occasion recorded as appearing for the prosecuting authority, and on another occasion as appearing for the Attorney-General but that, in any case, 35

his submissions and stand taken show that he was, in fact, appearing for the prosecution. Counsel for the applicant further argued that in view of the fact that the Chairman of the Investigating Committee set up under s. 4 of the Law was a
5 counsel of the Republic, the Chairman of the Disciplinary Board appointed under s.8(1) is a Senior Counsel of the Republic, both in the Attorney-General's office and in view of the functions of the Attorney-General both under s.6(1)(2) and s.9(3) of the
10 Law the situation which arises is that in fact the Attorney-General through the law officers is in substance the investigator, the prosecutor, the Judge and the legal adviser of the Judge at the same time and now, also the lawyer of the Judge.

Substantially the same point is raised in paragraph 4(2) of the grounds for relief at pp. 5 and 6 of the record before us.

15 In support of his argument counsel for the applicant cited the case of *In Re Tritofydes*, 17 C.L.R. p. 79. That was a case in which the Medical Council ordered the name of a medical practitioner to be erased from the medical register for improper
20 conduct and he appealed against such order. The Medical Council was advised by the Attorney-General's department before the charge was framed against the appellant and the Law Officer also assisted in framing the charge. The Acting Attorney-General took an active part in the enquiry before the Medical
25 Council as a friend of the Council to assist in the presentation of the case. This the Acting Attorney-General did, stating the complainant's case to the Council at the beginning and addressing the Council at the end of the proceedings, calling and examining the complainant and all the witnesses in support of
30 the complainant and cross-examining the appellant and his witnesses. The Acting Attorney-General also, at his own instance, called two additional witnesses to rebut certain evidence for the defence after the defence had closed.

But he not only presented the complainant's case to the Council but he appears to have attended the enquiry also in
35 the capacity of legal assessor to the Council.

The Court of Appeal after hearing argument thought that the Acting Attorney-General was closely connected with what one may term the prosecution and that he very forcibly took the side of the complainant.

We may usefully quote a passage from the judgment of the Chief Justice at p. 82:

“It would, in my view, be extremely difficult, to say the least, for anyone person, even with the most scrupulous regard for fairness and impartiality to combine in himself these two very different functions, that of prosecutor, for this is what the Acting Attorney-General undoubtedly was, and that of Legal or Judicial Assessor to the Council before whom he was conducting the prosecution. So difficult, indeed, would the combination be, both for the person in whom the two functions were combined, and for the Medical Council who must constantly distinguish between them, that, in my opinion, they should certainly not have been combined in one person”.

and later in the judgment this passage occurs (at p. 84):

“The conduct of the complainant’s case by the Acting Attorney-General was indistinguishable from that of a prosecutor and, in my opinion, the combination of two incompatible functions in him, throughout the enquiry, coupled with the character of his final speech to the Council, while occupying that double relation towards them, cannot but undermine that confidence in their finding which one would naturally have felt, whatever conclusion they had reached, if their enquiry had been conducted in freedom from these difficulties. The conclusion that they reached may have been right. I express no opinion, one way or the other, on that point. But the manner in which the enquiry was conducted, deprived it, in my view, of the character which it should have had as a domestic enquiry by representatives of the medical profession into the conduct of a member of their own profession. It was not, I think, a due enquiry such as the law requires before the Council is authorised to order the removal of a practitioner’s name from the Medical Register.”

The appeal was allowed and the removal of appellant’s name from the Medical Register was cancelled.

In the case before us, the same as in the *Tritofydes* case, if there was any irregularity or mischief committed which would warrant a finding that there has been contravention of the

rules of natural justice, as alleged by learned counsel for the applicant — and at this stage we express no view on this matter —it was committed in the proceedings before the Disciplinary Board.

5 We are clearly of opinion that, in the circumstances of this case, the appearance of counsel of the Republic for the Board can in no way be considered as improper or contrary to any principles of law or to be likely to have any adverse effect in the present proceedings before this Court which are quite
10 distinct from those before the Board and we see no valid reason for preventing him from so appearing.

We wish to stress that this decision in no way affects or pre-judges the validity of the point raised at paragraph 4(2) of the grounds for relief which is, in our view, premature and unneces-
15 sary for the purposes of our decision on the objection taken by counsel for the applicants to decide at the present stage of the proceedings and which will be decided at the proper time.

In the result this preliminary objection is dismissed.

Order accordingly.

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20 On July 4, 1978 the following Order of the Court was given by:

L. LOIZOU J.: What this Court has to decide in these appli-
cations, at this stage, is whether it should grant leave to file
applications for orders of certiorari and prohibition or not.
25 Mr. Antoniadis appearing for the respondents has conceded that at least some of the grounds raised in the applications are not frivolous and that there is an arguable case. He, however, was concerned with the question of whether this Court has jurisdiction to deal with these applications and has invited the
30 Court to hear the issue of jurisdiction as a preliminary separate issue. The majority of this Court are of the view that as in order to decide the issue of jurisdiction they have to decide other issues which go to the merits of the applications, such as the status of the organ concerned, a matter which is interwoven
35 with the question of jurisdiction, we should, at this stage, having been satisfied that *prima facie* there are good grounds for doing so, grant the leave prayed for and decide the question of jurisdiction together with all other relevant issues. Mr. Justice A.

LOIZOU is of the opinion that in the circumstances, the question of jurisdiction should be heard and decided at this stage.

In the result, the applicants are granted leave to apply for orders of certiorari and prohibition within seven days from today; copies to be served also on the Attorney-General of the Republic. Opposition to be filed seven days thereafter. 5

The applications are fixed for hearing on the 26th July, 1978, at 10.00 a.m. In the meantime all proceedings before the respondent board in applications 1/78 and 2/78 are hereby stayed. 10

Applications granted.