

1981 April 30

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF APPLICATIONS BY ANDREAS AZINAS  
FOR ORDERS OF CERTIORARI AND PROHIBITION,

and

IN THE MATTER OF AN APPLICATION BY  
THEODOSIS MALIKIDES AND OTHERS  
FOR ORDERS OF CERTIORARI AND MANDAMUS.

(Applications Nos. 34/80, 35/80, 36/80).

*Natural justice—Impartiality—Bias—Maxim that justice must not only be done but must also be seen to be done—Application for prerogative orders—Judge hearing case the godfather of applicant's daughter—Judge disclosing this fact to all counsel who raised no objection to his hearing the application—Conviction of applicant in another case before delivery of judgment in the application—And filing of criminal appeal—Counsel for prosecution informing Judge that he was contemplating to raise issue that he was disqualified from sitting as a member of the Court to hear the appeals in view of the above, maxim—Direction for hearing argument on issue whether or not Judge disqualified from determining the application.*

Pursuant to leave granted by the President of the Court ("the Judge") applicants filed applications for orders of certiorari, prohibition and mandamus. The applications were heard on October 6 and 8, 1980, judgment was reserved, and was due to be delivered on May 11, 1981. At the stage of granting leave the Judge disclosed to all counsel that he was the godfather of a daughter of one of the applicants ("applicant Azinas") but that he had no difficulty to deal with the applications completely uninfluenced in any way by this fact. All counsel stated that they had no objection at all to the applications being heard by him.

On April 8, 1981, applicant Azinas was found guilty of several offences contrary to sections 105, 133, 255 and 270(b) of the Criminal Code, Cap. 154 and was sentenced to 18 months'

imprisonment. He filed appeals against his conviction and sentence and an application for bail pending the determination of the appeals. The applications for bail were withdrawn and dismissed by a bench of the Court presided by the Judge; and the appeals were fixed for hearing on May 13, 14 and 15, 1981, before a bench presided by the Judge. 5

In the meantime on February 26, 1981 the Judge sat as a member of the Full Bench of the Court which dealt with an appeal filed by applicant Azinas in relation to a decision of the Council of Ministers to interdict him from carrying out the duties of Registrar of Co-Operative Societies; and on that date he delivered the unanimous judgment of the Court dismissing the appeal. Both during the hearing of this appeal and the application for bail the Attorney-General of the Republic was represented by different Senior Counsel of the Republic who have not raised the issue that the Judge was disqualified from dealing with these proceedings. 10 15

On April 23, 1981 the Senior Counsel of the Republic who was appearing on behalf of the Attorney-General of the Republic in the criminal appeals filed by applicant Azinas informed the Judge that it was being contemplated, though it had not yet been finally so decided, to raise at the commencement of the hearing of the appeals, for consideration by the Court, the issue of whether or not, in view of the legal principle that justice must not only be done but must also be seen to be done, the Judge was disqualified from sitting as a member of the Court to hear the appeals because of the fact that he was the godfather of the daughter of applicant Azinas. 20 25

On April 30, 1981 the Judge having invited all Counsel before him made the following direction: 30

- (1) I have, decided to afford even now an opportunity to the Attorney-General of the Republic, or to counsel appearing on his behalf, to seek to argue before me whether or not I am disqualified from determining these applications for the reason for which it is being contemplated to submit that I am disqualified from determining the criminal appeals in question. 35
- (2) I am fixing the present applications for further hearing on May 5, 1981, at 5 p.m., so that there may then be

submitted on the part of the Attorney-General, that I am disqualified from acting judicially in cases to which Andreas Azinas is a party, because I am the godfather of one of his daughters; assuming, of course, that by that date the Attorney-General, after giving full and final consideration to this matter, is of that view; a view which, for the time being, I do not share, but which I am ready to consider with all possible care and with an entirely open mind.

Order accordingly.

Cases referred to:

*Azinas v. The Republic* (Revisional Appeal 235, decided on February 26, 1981, not yet reported).

*In re Malikides and Others* (1980) 1 C.L.R. 472 at p. 480.

### 15 Applications.

Applications for orders of certiorari, prohibition and mandamus in connection with proceedings in relation to applicants before the District Court of Nicosia in respect of charges preferred against them in Criminal Case No. 10346/80.

20 *L. Clerides with St. Charalambous and C. Clerides*, for the applicant in 34/80 and 35/80.

*S. Mamantopoulos with L. HadjiDemetris*, for the applicants in 36/80.

25 *R. Gavrielides*, Senior Counsel of the Republic, for the respondent Attorney-General of the Republic.

*Cur. adv. vult.*

30 TRIANTAFYLLIDES P. read the following direction. These three applications for orders of certiorari, prohibition and mandamus were heard together on October 6 and 8, 1980, and counsel for the parties have already been notified that on May 11, 1981, I will give my decision as regards their outcome.

35 I have found it, however, necessary to fix these applications for directions today in view of a very recent and unforeseen development. Before I state what is this development, it is useful, in my opinion, to refer to certain earlier stages of these cases, as well as to some other proceedings before me to which the applicant in cases 34/80 and 35/80, Andreas Azinas, has been, or is still, a party:

40 The present applications were filed as a result of leave granted for this purpose, by me, in applications 28/80, 29/80 and 30/80.

On July 24, 1980, applications 28/80 and 29/80 came before me for the first time. Mr. E. Efstathiou with Mr. S. Mamantopoulos appeared for the applicants in 28/80; Mr. L. Clerides with Mr. St. Charalambous and Mr. C. Clerides appeared for the applicant in 29/80; and Mr. S. Nicolaides, who was at the time Senior Counsel of the Republic and who is now a District Judge, appeared for the Attorney-General of the Republic. It is to be noted that Mr. Nicolaides appeared too at all subsequent stages of the hearing of applications 28/80, 29/80 and 30/80 and, also, on October 6 and 8, 1980, at the hearing of the present applications.

On July 24, 1980, the record of the Court, which I wrote down myself, reads as follows:

*Court:* I feel that I should disclose, before hearing these applications, which have been fixed before me on the strength of existing arrangements of the Court, and which, also, appear to be closely related to each other, that I am the godfather of a daughter of the applicant in 29/80. In so far as I am concerned I have no diffidulty to deal with these applications completely uninfluenced in any way by this fact. But I bring it publicly to the notice of counsel in case any one of them would like to express any views in this respect.

*All counsel* (Mr. Efstathiou, Mr. Clerides and Mr. Nicolaides) state that they have no objection at all to these applications being heard by this Court and that they agree to such a course".

On September 9, 1980, I gave my decisions in relation to applications 28/80, 29/80 and 30/80, and in the decision in respect of applications 28/80 and 29/80 ((1980) 1 C.L.R. 472, 480) I stated the following:-

"Before concluding this decision I wish to put on record that because of the fact that I am the godfather of a daughter of the applicant in Application 29/80 I have had to consider whether I should entertain myself the present proceedings. In so far as I was concerned I felt no difficulty in doing so, but in accordance with what was indicated as the correct practice in *R. v. Altrincham Justices ex parte Pennington*, [1975] 2 All E.R. 78, 83, I brought the above fact to the attention of the parties before the start of the hearing of the present applications and as there was no objection

on the part of anyone of them to my dealing with them I proceeded to hear and determine them”.

Then, from the time when the present applications—34/80, 35/80 and 36/80—first came before me and up to now no objection to my dealing with them, on the ground that I am the godfather of a daughter of one of the applicants, Andreas Azinas, was raised by counsel appearing on behalf of the Attorney-General.

In the meantime, on February 26, 1981, I sat in Court as a member of a Full Bench of this Court which dealt with Revisional Appeal 235 (*Azinas v. The Republic*, not reported yet) which was filed by the said Azinas in relation to the decision of the Council of Ministers to interdict him from carrying out the duties of the post of Registrar of Co-operative Societies and to appoint somebody else as Acting Registrar. On that date the unanimous judgment of the Court was delivered by me dismissing the appeal. Counsel who appeared on that date for the Attorney-General—Senior Counsel of the Republic Mr. V. Aristodemou—did not in any way indicate that there was any objection, on the ground of my aforementioned connection with appellant Azinas, to adjudicating on his said appeal.

Later on, Azinas, who was one of the two accused in criminal case 17841/80 in the District Court of Nicosia, was found guilty, on April 8, 1981, of several offences contrary to sections 105, 133, 255 and 270(b) of the Criminal Code, Cap. 154, and he was sentenced to eighteen months’ imprisonment on April 9, 1981. On April 10, 1981, he filed criminal appeals 4214 and 4215 against conviction and sentence, and on the same date he applied, by means of criminal application 1/81, for bail pending the determination of his appeals.

I was a member of the appellate bench which dealt, on April 17, 1981, with that application, as well as with a similar application for bail—criminal application 2/81—filed by Panayiotis Orphanos, the co-accused of Azinas. On that date Mr. A. Evangelou, Senior Counsel of the Republic, appeared for the Attorney-General. He did not raise at all the issue that, due to the fact that I am the godfather of a daughter of Azinas, I was disqualified from dealing with his application for bail. Eventually, both the aforesaid applications for bail were withdrawn and dismissed accordingly:

At that time the two criminal appeals of Azinas (4214 and 4215) and those made, similarly, by Orphanos (4216 and 4217) were, by the appellate bench of which I was a member, and in the presence of counsel for all the parties, fixed for a joint hearing on May 13, 14 and 15, 1981. Mr. Evangelou did not in any way indicate then that I am, in his view, disqualified from sitting to deal with these appeals.

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I come next to the development which rendered it necessary to call counsel for the parties in applications 34/80, 35/80 and 36/80 before me today:

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On April 23, 1981, at 10 a.m., Mr. Evangelou visited me in my chambers and told me, in substance, that he had come to inform me officially, on behalf of the Attorney-General, that it was being contemplated, though it had not yet been finally so decided, to raise, at the commencement of the hearing of the aforementioned criminal appeals, for consideration by the Court, the issue of whether or not, in view of the legal principle that justice must not only be done but must also be seen to be done, I was disqualified from sitting as a member of the Court to hear the said appeals because of the fact that I am the godfather of a daughter of one of the appellants, Azinas. Mr. Evangelou was kind enough to stress that neither he, nor the Attorney-General, had any doubt that I would administer justice uninfluenced by my said connection with Azinas, and that it was contemplated to raise the aforementioned issue merely for the sake of adhering to the legal principle in question.

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I expressed to Mr. Evangelou my astonishment due to the fact that such an issue was to be raised so belatedly after I had commenced dealing judicially with proceedings to which Azinas was or is a party, and I brought to the notice of Mr. Evangelou that I had to deliver judgment in the present applications on May 11, 1981, and that I could not see how I could possibly be disqualified from determining the criminal appeals fixed for hearing on May 13, 1981, without being, also, disqualified, for exactly the same reason and on the basis of the same legal principle, from determining the present applications.

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I have, therefore, decided to afford even now an opportunity to the Attorney-General of the Republic, or to counsel appearing on his behalf, to seek to argue before me whether or not I am

disqualified from determining these applications for the reason for which it is being contemplated to submit that I am disqualified from determining the criminal appeals in question.

- 5 I am fixing the present applications for further hearing on May 5, 1981, at 5 p.m., so that there may then be submitted on the part of the Attorney-General, that I am disqualified from acting judicially in cases to which Andreas Azinas is a party, because I am the godfather of one of his daughters; assuming, of course, that by that date the Attorney-General, 10 after giving full and final consideration to this matter, is of that view; a view which, for the time being, I do not share, but which I am ready to consider with all possible care and with an entirely open mind.

*Order accordingly.*