1981 June 13

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, MALACHTOS, DEMETRIADES, SAVVIDES, JJ.]

IN THE MATTER OF THE ADVOCATES LAW, CAP. 2,

and

IN THE MATTER OF A COMPLAINT BY THE CHAIRMAN OF THE LOCAL BAR COMMITTEE OF LIMASSOL AGAINST X.Y. AN ADVOCATE.

Advocates—Conduct and etiquette—Disciplinary proceedings—Commenced by Chairman of Local Bar Committee under section 17(2) of the Advocates Law, Cap. 2 (as amended)—Whether Chairman can appeal against the decision of the Disciplinary Board—Section 17(4) of the Advocates Law (as set out in section 8 of Law 40/75).

Advocates Law Cap. 2 (as amended)—Chairman of Local Bar Committee—Whether a "complainant" within the meaning of section 17(4) of the Law (as set out in section 8 of Law 40/75).

On October 25, 1976, the Chairman of the Local Bar Committee of Limassol, acting under section 17(2)(c) of the Advocates Law, Cap. 2 (as amended by Laws 42/61, 20/63, 46/70 and 40/75) made a report* to the Attorney-General of the Republic, as Chairman of the Advocates Disciplinary Board, to the effect that Advocate A. Neocleous, of Limassol, ("the respondent-advocate"), has committed the disciplinary offences of disgraceful or unprofessional conduct because he has served as a Minister under Nicolaos Sampson in the Council of Ministers which was formed during the coup d'etat of July, 1974. The Disciplinary Board acquitted the respondent advocate on the ground that his conduct did not constitute any disciplinary offence either under s.17(1) of the Advocates Law (*supra*) or under the provisions of the Advocates (Practice and Etiquette) Rules 1966. The Chairman of the Local Bar Committee of

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* The report is quoted in full at pp. 403-4 *post*.

Limassol, acting under s. 17(4)* of the Advocates Law (*supra*), as set out in section 8 of the Advocates (Amendment) Law, 1975 (Law 40/75), filed an appeal against the decision of the Disciplinary Board.

On the sole preliminary point whether, in view of the provisions of the said section 17(4), *the Chairman of the Limassol Bar Committee had a right of appeal against the decision of the Disciplinary Board*:

Held, (*Triantafyllides, P. and Demetriades J. dissenting*) that the Chairman of the Limassol Local Bar Committee cannot be considered as a "complainant" under section 17(4) of the Advocates Law (as set out in section 8 of Law 40/75) and in consequence he cannot appeal against the decision of the Advocates Disciplinary Board; accordingly the appeal must be dismissed.

Appeal dismissed.

Cases referred to:

Attorney-General of the Republic v. *Pouris and Others* (1979) 2 C.L.R. 15;

Allinson v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 760;

In re an Advocate, 9 C.L.R. 11;

McEniff v. *General Dental Council* [1980] 1 W.L.R. 328 at pp. 330, 331, 332.

Appeal.

Appeal by the Chairman of the Limassol Bar Committee, against the decision of the Disciplinary Board whereby it was decided that the conduct of advocate Andreas Neocleous did not constitute any disciplinary offence either under the provisions of s. 17(1) of the Advocates Law or under the provisions of the Advocates (Practice and Etiquette) Rules, 1966.

* Section 17(4) reads as follows:

"The Attorney-General of the Republic, the convicted advocate or the complainant may within two months of the delivery of the decision by the Disciplinary Board, appeal to the Supreme Court, in accordance with the procedure prescribed by rules issued by the Supreme Court in this respect, which, in accordance with the aforesaid rules proceeds to the hearing of the appeal and is vested with the power to either confirm the decision of the Disciplinary Board or set aside or modify it or issue such other order as it may deem fit".

P. Pavlou, for the appellant Local Bar Committee of Limassol.

L. Clerides with *T. Eliades*, members of the Advocates Disciplinary Board, as amici curiae.

L. Papaphilippou with *G. Kaizer*, *A. Evzonas*, *M. Christofides*, *Chr. Solomis*, *A. Andreou*, for the respondent advocate.

Cur. adv. vult.

The following judgments were read:

L. LOIZOU J.: This is an appeal against the decision of the Disciplinary Board of the Bar Association in disciplinary proceedings against Mr. Andreas Neocleous an advocate, of Limassol.

The facts in so far as they are relevant for the determination of the issue before this Court are briefly as follows:

On the 25th October, 1976, the then Chairman of the Limassol Bar Committee made a report to the Attorney-General of the Republic as Chairman of the Disciplinary Board against the respondent advocate. As expressly stated therein such report was made under the provisions of s. 17(2)(c) of the Advocates Law, Cap. 2 (as amended). The report which is self-explanatory reads as follows:

"Έντιμε κ. Συνάδελφε,

Ύπὸ τὴν ἰδιότητα μου ὡς Προέδρου τοῦ Δικηγορικοῦ Συλλόγου Λεμεσοῦ καὶ δυνάμει τῶν ἐξουσιῶν δι' ὧν περιβέβλημαι δυνάμει τῆς παραγράφου (γ) τοῦ ἐδαφίου (2) τοῦ ἄρθρου 17 τοῦ περὶ Δικηγόρων Νόμου ΚΕΦ. 2 (ὡς ἐτροποποιήθη) διὰ τῆς παρούσης καταγγέλλω τὸν συνάδελφον Ἀνδρέαν Νεοκλέους ἐκ Λεμεσοῦ, ὡς ἔνοχον ἐπονοιδίστου ἢ ἀσυμβιβάστου πρὸς τὸ ἐπάγγελμα διαγωγῆς ἢ/καὶ διαγωγῆς ἀντικειμένης πρὸς τοὺς περὶ Δεοντολογίας τῶν Δικηγόρων κανονισμοὺς καὶ δὴ τοὺς κανονισμοὺς 2, 3 καὶ 4 ἢ/καὶ ἄλλους τοιούτους διότι ἐδέχθη διορισμὸν καὶ ὑπηρέτησε ὡς ὑπουργὸς εἰς τὸ ὑπὸ τὸν κ. Νικόλαον Σαμψὼν πραξικοπηματικὸν καὶ παράνομον Ὑπουργικὸν Συμβούλιον.

Ἡ παροῦσα καταγγελία ὑποβάλλεται ὑμῖν κατόπιν ἐντολῆς τοῦ Δικηγορικοῦ Σώματος Λεμεσοῦ ἐν Γενικῇ Συνελεύσει λαβούσῃ χώραν τὴν 24ην Μαΐου 1975 καὶ τῆς δυνάμει τῆς ἐν αὐτῇ ληφθείσης ἀποφάσεως γενομένης εἰς ἐμὲ ἐγγράφου καταγγελίας ἀριθμοῦ δικηγόρων μελῶν τοῦ Δικηγορικοῦ Συλλόγου Λεμεσοῦ".

("In my capacity as Chairman of the Limassol Bar Committee and by virtue of the powers with which I am vested on the basis of paragraph (c) of subsection (2) of section 17 of the Advocates Law, Cap. 2 (as amended), I hereby report my colleague Andreas Neocleous, of Limassol, as guilty of disgraceful or unprofessional conduct and/or conduct which is contrary to the Advocates Rules of Etiquette and in particular rules 2, 3 and 4, and/or any such other rules, because he had accepted appointment and served as a Minister in the 'illegal Council of Ministers' formed by the coup d'etat under Mr. Nicolaos Sampson.

The present report is submitted to you on the instructions of the Limassol Bar Association at a General meeting which took place on the 24th May, 1975, and on the basis of a decision taken during it upon a written report made to me by a number of advocates members of the Limassol Bar Association").

By its decision of the 9th January, 1980, the Disciplinary Board, being of the opinion, for the reasons stated in full in the said decision, that the conduct of the advocate concerned reported by the Chairman of the Limassol Bar Committee did not constitute any disciplinary offence either under the provisions of s. 17(1) of the Advocates Law or under the provisions of the Advocates (Practice and Etiquette) Rules, 1966, came to the conclusion that the case did not fall within its competence.

On the 4th February, 1980, the present Chairman of the Limassol Bar Committee presumably acting under the provisions of s.17(4) of the Advocates Law (as set out in s.8 of the Advocates (Amendment) Law, 1975 (Law 40 of 1975)) filed an appeal in this Court against the decision of the Disciplinary Board challenging its correctness on four grounds.

On the 26th April, 1980, counsel appearing for the respondent advocate filed a notice to the effect that at the hearing of the appeal they would apply to the Court that certain preliminary points of law be heard in the first instance.

When the appeal came up for hearing before the Full Bench of this Court an application was made on behalf of the respondent advocate that the first of such points of law be heard as a preliminary issue. This preliminary point reads as follows:

"(α) Ότι δέν ὑπάρχει νομίμως ἔφεσις ἐνώπιον τοῦ Ἀνωτάτου Δικαστηρίου".

("That there is not in law an appeal before the Supreme Court").

With the consent of all concerned and with the leave of the Court this legal issue was heard as a preliminary point of law. And this is the only issue that this Court has to decide at this stage.

The substance of the arguments advanced on behalf of the respondent, very briefly, were:

(a) That in the light of the provisions of sub-section (2) of s.17 and sub-section (4) of the same section (as set out in s.8 of Law 40 of 1975) the Chairman of the Limassol Bar Committee has no right of appeal not being a complainant (παραπονούμενος) and that, therefore, these proceedings could not, in law, commence.

(b) That as the Rules for which provision is made in sub-section (4) of s.17 for regulating the procedure of filing and hearing an appeal had not been made by the Supreme Court the said section is imperfect in the sense that it is not yet applicable.

Counsel appearing as amici curiae agreed with the above submissions, although they had some doubts in so far as the part of the argument relating to the rules was concerned, and further added that in view of the provisions of s.17(7) of Cap. 2 which provides that "the Disciplinary Board in carrying out an enquiry under this section shall have the same powers and shall conduct the enquiry as nearly as may be as a Court of summary jurisdiction" even if there was a right of appeal by the Chairman of the Limassol Bar Committee there would be no such right in case of acquittal and this in view of the provisions of sections 131(2) and 137(1) of the Criminal Procedure Law, Cap. 155. The case of *The Attorney-General of the Republic* v. *Pouris and Others* (1979) 2 C.L.R. 15 was cited in support of this proposition.

The substance of the argument of counsel for the appellant on this issue, on the other hand, was that the word "complainant" (παραπονούμενος) in sub-section (4) of s. 17 included the Chairman of a Local Bar Committee. He mainly based his

argument on the dictionary meaning of the words "report" and "complainant". It was further contended that s.17(4) gave a substantive right which could not be defeated in view of a procedural technicality and that it was not legally possible to divide the whole section in two parts and say that the first part is in force and the second is not.

It will be convenient and useful to give a brief account of the development of our law relating to the discipline of advocates to its present state.

Prior to the enactment of the Advocates Law, 1933 (Law 20 of 1933) there was no provision in the Advocates Laws, for the time being in force, with regard to discipline. The only provision until then was to be found in clause 183 of the Cyprus Courts of Justice Order 1882 which was subsequently reproduced in clause 192 of the Cyprus Courts of Justice Order 1927.

By the enactment of Law 20 of 1933 on the 8th June, 1933, the previous enactments relating to advocates were consolidated and amended and provision relating to discipline was made in s.11 thereof which reads as follows:

> "11. (1) The Supreme Court shall have power to order the name of any advocate to be struck off the Roll of Advocates or to order any advocate to be suspended from practising during such period as it may think fit; and any Court shall have power to suspend any advocate temporarily from practising before it pending a reference to the Supreme Court which may confirm, disallow or extend the period of such suspension or may order such advocate to be suspended from practising in any Court in Cyprus during the period of his suspension or may order his name to be struck off the Roll.
>
> (2) Where by any such order as aforesaid the name of any advocate is ordered to be struck off the Roll or any advocate is suspended from practice the Chief Registrar shall forthwith upon the filing of the order cause a notice stating the effect of the operative part thereof to be published in the Cyprus Gazette.
>
> (3) The Supreme Court may, if it thinks fit, at any

time after the expiration of five years from the date of an order striking the name of an advocate off the Roll of Advocates, order the Chief Registrar to replace on the Roll the name of such advocate."

The above section was not affected by any of the amendments to Law 20 of 1933 until the 11th January, 1949, when the Advocates (Amendment) Law, 1949 (Law 2 of 1949) was enacted. By s.3 of the above Law s.11 of Law 20 of 1933 was repealed and the following section was substituted therefor:

"11.(1) If any advocate is convicted by any Court of any offence which, in the opinion of the Supreme Court, involves moral turpitude or is, in the opinion of the Supreme Court, guilty of disgraceful, fraudulent or unprofessional conduct, the Supreme Court may—

(a) order the name of the advocate to be struck off the Roll of Advocates;

(b) suspend the advocate from practising for such period as the Court may think fit;

(c) order the advocate to pay, by way of fine, any sum not exceeding five hundred pounds;

(d) warn or reprimand the advocate;

(e) make such order as to the payment of the costs of the proceedings before the Supreme Court as the Court may think fit.

(2) Proceedings to enforce any of the penalties provided by sub-section (1) may be commenced by the Supreme Court of its own motion or by an application to a Judge of the Supreme Court in Chambers for a rule to issue to the advocate calling upon him to show cause why he should not be dealt with under the provisions of the said sub-section.

An application under this sub-section may be made by the Attorney-General or, with the leave of the Supreme Court, by any person aggrieved by the conduct of the advocate.

(3) Where by any order made by the Supreme Court

under the provisions of sub-section (1) the name of any advocate is ordered to be struck off the Roll or any advocate is suspended from practice, the Chief Registrar shall forthwith cause a notice stating the effect thereof to be published in the Gazette.

(4) The Supreme Court may, if it thinks fit, at any time after the expiration of five years from the date of an order striking the name of an advocate off the Roll of Advocates, order the Chief Registrar to replace on the Roll the name of such advocate. The Chief Registrar shall forthwith cause the effect of any such order to be published in the Gazette.

(5) For the purposes of compelling payment of any fine or any costs ordered to be paid under the provisions of this section, the Supreme Court shall have power to issue the same process as may be issued to compel payment of a judgment debt".

This section was reproduced as s.10 in the Advocates Law, Cap. 3 in the 1949 edition of the Laws of Cyprus. Cap. 3 was repealed by the Advocates Law, 1955 (No. 38 of 1955) which by its sections 11, 12 and 13 made the following provisions relating to discipline:

"11. Every advocate shall be deemed to be an officer of the Supreme Court and shall be liable to disciplinary proceedings as in this Part provided.

12.(1) There shall be established a Disciplinary Board to exercise, subject to the provisions of this Law, control and disciplinary jurisdiction over every advocate.

(2) The Disciplinary Board shall consist of the Attorney-General, or in his absence or incapacity of the Solicitor-General, as Chairman, the Chairman of the Bar Council, as ex officio member, and three advocates, out of whom two shall have not less than fifteen years practice, elected every three years by an ordinary general meeting of the Bar Association, to hold office, until another election takes place, as elected members:

Provided that any elected member whose period of office has expired shall continue to hold office for the purpose

of completing any enquiry commenced at the time he was a member:

Provided further that in case of absence or incapacity of the Attorney-General or the Solicitor-General, the Chairman of the Bar Association shall act as Chairman of the Board.

13.(1) If any advocate is convicted by any Court of any offence which, in the opinion of the Disciplinary Board, involves moral turpitude or if such advocate is, in the opinion of the Disciplinary Board, guilty of disgraceful fraudulent or unprofessional conduct, the Disciplinary Board may—

(a) order the name of the advocate to be struck off the Roll of Advocates;

(b) suspend the advocate from practising for such period as the Disciplinary Board may think fit;

(c) order the advocate to pay, by way of fine, any sum not exceeding five hundred pounds;

(d) warn or reprimand the advocate;

(e) make such order as to the payment of the costs of the proceedings before the Disciplinary Board as the Disciplinary Board may think fit.

(2) Proceedings to enforce any of the penalties provided by sub-section (1) may be commenced—

(a) by the Disciplinary Board of its own motion;

(b) by the Attorney-General;

(c) on a report made to the Disciplinary Board by any Court or a Chairman of a Local Bar Committee;

(d) by an application, with the leave of the Disciplinary Board, of any person aggrieved by the conduct of the advocate.

(3) The Disciplinary Board shall forthwith send to the Chief Registrar—

(a) copy of any complaint or report made against an advocate under sub-section (2);

(b) copy of its decision in the enquiry,

and the Chief Registrar shall, subject to any order of the Supreme Court under sub-section (4) or (5), make the necessary entries in the Roll of Advocates.

(4) If no copy of the decision of the Disciplinary Board has been received by the Chief Registrar after the expiration of three months from the date on which any complaint or report has been made to the Disciplinary Board, the Supreme Court may make any order in the matter of such complaint or report as the Disciplinary Board might have made under the provisions of sub-section (1).

(5) The Supreme Court may, of its own motion or on the application of the complainant or of the advocate whose conduct is the subject of the enquiry, review the whole case and either confirm the decision of the Disciplinary Board or set it aside or make such other order as it may deem fit.

(6) The Disciplinary Board may, if it thinks fit, at any time after the expiration of five years from the date of an order striking the name of an advocate off the Roll of Advocates, inform the Chief Registrar that in the opinion of the Disciplinary Board the name of such advocate should be restored to the Roll; the Chief Registrar shall refer the matter to the Chief Justice who may direct that the name of such advocate be replaced on the Roll. The Chief Registrar shall forthwith cause a notice of the direction of the Chief Justice to be published in the Gazette.

(7) The Disciplinary Board in carrying out an enquiry under this section shall have the same powers and shall conduct the enquiry as nearly as may be as a Court of summary jurisdiction.

(8) Any decision of the Disciplinary Board shall be deemed to be an order of a Court of summary jurisdiction and shall be enforced in the same manner as an order of such Court is enforced".

These sections were reproduced under the same numbers in the Advocates Law, Cap. 2 of the Laws of Cyprus, 1959 edition, but they were subsequently renumbered as sections 15, 16 and 17, respectively, by s. 5 of Law 5 of 1961.

Finally section 17 was amended by section 8 of the Advocates (Amendment) Law, 1975 (No. 40 of 1975) by the deletion of sub-sections 3, 4, 5 and 6 thereof and the substitution therefor of the following sub-sections:

"(3) Τὸ Πειθαρχικὸν Συμβούλιον ἀποστέλλει πρὸς τὸν 'Αρχιπρωτοκολλητὴν ἀντίγραφον τῆς ἀποφάσεως αὐτοῦ κατὰ τὴν ἔρευναν καὶ ὁ 'Αρχιπρωτοκολλητής, μετὰ τὴν πάροδον τῆς νενομισμένης προθεσμίας ἐφέσεως ἐὰν δὲν ἔχῃ γίνει τοιαύτη ἢ τηρουμένης πάσης ἀποφάσεως τοῦ 'Ανωτάτου Δικαστηρίου, ἐπὶ τῆς γενομένης ἐφέσεως, ἢ βάσει τοῦ ἐδαφίου 5, προβαίνει εἰς τὰς ἀναγκαίας καταχωρήσεις ἐν τῷ Μητρώῳ τῶν Δικηγόρων.

(4) 'Ο Γενικὸς Εἰσαγγελεὺς τῆς Δημοκρατίας, ὁ καταδικασθεὶς ἢ ὁ παραπονούμενος δύναται ἐντὸς δύο μηνῶν ἀπὸ τῆς ἐκδόσεως τῆς ἀποφάσεως ὑπὸ τοῦ Πειθαρχικοῦ Συμβουλίου νὰ ἐφεσιβάλῃ ταύτην, συμφώνως πρὸς τὴν ἐπὶ τούτῳ ὑπὸ ἐκδιδομένου διαδικαστικοῦ κανονισμοῦ ὑπὸ τοῦ 'Ανωτάτου Δικαστηρίου προβλεπομένην διαδικασίαν, εἰς τὸ 'Ανώτατον Δικαστήριον τὸ ὁποῖον συμφώνως πρὸς τὸν ρηθέντα διαδικαστικὸν κανονισμὸν προβαίνει εἰς ἀκρόασιν τῆς ἐφέσεως καὶ κέκτηται ἐξουσίαν ὅπως εἴτε ἐπικυρώσῃ τὴν ἀπόφασιν τοῦ Πειθαρχικοῦ Συμβουλίου εἴτε ἀκυρώσῃ ἢ τροποποιήσῃ ταύτην ἢ ἐκδώσῃ ἕτερον διάταγμα ὡς ἤθελε θεωρήσει πρέπον.

(5) Παρὰ τὰς διατάξεις τοῦ ἐδαφίου (4) τὸ 'Ανώτατον Δικαστήριον κέκτηται ἐξουσίαν ὅπως αὐτεπαγγέλτως ἀναθεωρῇ, συμφώνως πρὸς τὴν ἐπὶ τούτῳ προβλεπομένην διαδικασίαν ὑφ' οἱουδήποτε διαδικαστικοῦ κανονισμοῦ, οἱανδήποτε ἀπόφασιν τοῦ Πειθαρχικοῦ Συμβουλίου διὰ πειθαρχικὸν ἀδίκημα τελεσθὲν ἐντὸς τοῦ δικαστικοῦ κτιρίου ἢ ἀφορῶν εἰς μέλος οἱουδήποτε δικαστηρίου καὶ κέκτηται ἐξουσίαν ὅπως εἴτε ἐπικυρώσῃ τὴν ἀπόφασιν τοῦ Πειθαρχικοῦ Συμβουλίου εἴτε ἀκυρώσῃ ἢ τροποποιήσῃ ταύτην ἢ ἐκδώσῃ ἕτερον διάταγμα ὡς ἤθελε θεωρήσει πρέπον.

(6) Τὸ Πειθαρχικὸν Συμβούλιον δύναται, ἐὰν θεωρήσῃ πρέπον, καθ' οἱονδήποτε χρόνον μετὰ παρέλευσιν πέντε ἐτῶν ἀπὸ τῆς ἡμερομηνίας διαγραφῆς τοῦ ὀνόματος δικηγόρου ἐκ τοῦ Μητρώου τῶν Δικηγόρων, νὰ διατάξῃ ὅπως ἀποκατασταθῇ τὸ ὄνομα τοῦ ἐν λόγῳ δηκηγόρου εἰς τὸ Μητρῷον

καὶ ὁ Ἀρχιπρωτοκολλητὴς μεριμνᾷ ἀμελλητὶ διὰ τὴν ἀποκατάστασιν τοῦ ὀνόματος τούτου ἐν τῷ Μητρώῳ καὶ δημοσίευσιν σχετικῆς εἰδοποιήσεως ἐν τῇ ἐπισήμῳ ἐφημερίδι τῆς Δημοκρατίας."

("(3) The Disciplinary Board sends to the Chief Registrar a copy of its decision in the enquiry and the Chief Registrar, after the lapse of the time prescribed for an appeal if no such appeal has been made, or subject to any decision of the Supreme Court, on the appeal, or on the basis of subsection 5, makes the necessary entries in the Roll of Advocates.

(4) The Attorney-General of the Republic, the convicted advocate or the complainant may within two months of the delivery of the decision by the Disciplinary Board, appeal to the Supreme Court, in accordance with the procedure prescribed by Rules issued by the Supreme Court in this respect, which, in accordance with the aforesaid Rules proceeds to the hearing of the appeal and is vested with the power to either confirm the decision of the Disciplinary Board or set aside or modify it or issue such other order as it may deem fit.

(5) Notwithstanding the provisions of subsection (4) the Supreme Court has power to review, of its own motion, in accordance with the procedure provided in this respect by any Rules of Court, any decision of the Disciplinary Board relating to a disciplinary offence committed within the Court building or relating to a member of any Court and has power either to confirm the decision of the Disciplinary Board or to set aside or modify it or make any order as it may deem fit.

(6) The Disciplinary Board may, if it thinks fit, at any time after the expiration of five years from the date of an order striking the name of an advocate off the Roll of Advocates, order that the name of such advocate be restored to the Roll and the Chief Registrar shall forthwith cause the restoration of his name to the Roll and the publication of a relevant notice in the official Gazette of the Republic").

Another minor amendment to paragraph (c) of sub-section

(1) of section 17 is of no consequence for the purposes of this case.

It will be seen from the above that the Disciplinary Board was first established and assumed the exercise of control and disciplinary jurisdiction over advocates on the 6th September, 1955, by Law 38 of 1955; and by sub-section (5) of section 13 of the same Law the decisions of the Disciplinary Board became subject to review by the Supreme Court. This right of review was exercised either by the Supreme Court of its own motion or on the application of the complainant or of the advocate whose conduct was the subject of the enquiry.

But the enactment of Law 38 of 1955 brought about certain other changes to the provisions relating to discipline. Prior to its enactment proceedings to enforce any of the penalties provided by the law in force could only be commenced by the Supreme Court of its own motion or by an application to a Judge of the Supreme Court in Chambers for a rule to issue to the advocate calling upon him to show cause why he should not be dealt with under the provisions of the law. An application of this nature, however, could only be made by the Attorney-General or, with the leave of the Supreme Court, by any person aggrieved by the conduct of the advocate. Also the Chairman of a Local Bar Committee as well as any Court where, by section 13(2)(c), thereof added to those who could commence proceedings before the Disciplinary Board for the enforcement of the penalties provided by sub-section (1) of the same section. The right of any person aggrieved by the conduct of the advocate to apply for the commencement of proceedings was, by paragraph (d), retained but again with the leave, this time, of the Disciplinary Board.

It is significant however, that under sub-section (5) of this same section the case could only be reviewed by the Supreme Court either of its own motion or on the application of the complainant or of the advocate whose conduct was the subject of the enquiry.

As stated earlier on sections 11, 12 and 13 have, by section 5 of Law 42 of 1961, been renumbered as sections 15, 16 and 17 and these are the numbers under which they appear in the law now in force, the Advocates Law, Cap. 2.

After the amendment of section 17 by Law 40 of 1975 the right of appeal is contained in sub-section (4) thereof. Under the provisions of this sub-section such right is expressly limited to the Attorney-General of the Republic, to the person convicted and to the complainant (παραπονούμενος).

And the issue that falls for determination by this Court at this stage is whether the Chairman of a Local Bar Committee has a right of appeal against the decision of the Disciplinary Board or to put it in another way whether the Chairman of a Local Bar Committee can be said to be a "complainant" (παραπονούμενος) within the meaning of this word in the said sub-section (4).

I am clearly of the opinion that the word "complainant" in the now repealed sub-section (5) of section 17 of Cap. 2 and "παραπονούμενος" in sub-section (4) (as set out in s. 8 of Law 40 of 1975), which is now in force, relate to the "person aggrieved" occurring in paragraph (d) of sub-section (2) of section 17 and to nobody else. This view is strengthened by the fact that under the present sub-section (4) the Attorney-General of the Republic has been added as a person who can appeal to the Supreme Court against the decision of the Disciplinary Board. It seems to me that if the word "complainant" (παραπονούμενος) was either capable or meant to include all those to whom reference is made in paragraphs (b), (c) and (d) of section 17(2) the Legislative Authority would not have deemed it necessary in enacting Law 40 of 1975, on the 1st August, 1975 to make specific provision giving the Attorney-General of the Republic a right of appeal since he was already included in paragraph (b) of sub-section (2).

In the light of the above I feel bound to determine the preliminary point raised and argued before this Court in favour of the respondent advocate and hold that the Chairman of the Limassol Bar Committee has no right of appeal to the Supreme Court against the decision of the Disciplinary Board.

Having come to this conclusion, which disposes of the present appeal, I do not consider it either necessary or desirable to deal with the other points raised.

ΧΑΤΖΗΑΝΑΣΤΑΣΣΙΟΥ Δ.:* Τὴν 25ην Ὀκτωβρίου, 1975, ὁ Πρόεδρος τοῦ Δικηγορικοῦ Συλλόγου Λεμεσοῦ μὲ ἐπιστολή του

* An English translation of this judgment appears at pp. 425-35 post.

ὑπέβαλε πρὸς τὸ Πειθαρχικὸ Συμβούλιο μὲ βάση τὴν παράγραφο (γ) τοῦ ἐδαφίου (2) τοῦ ἄρθρου 17 τοῦ Περὶ Δικηγόρων Νόμου Κεφ. 2 (ὅπως τροποποιήθηκε) καταγγελία κατὰ τοῦ δικηγόρου Ἀνδρέα Νεοκλέους, ἀπὸ τὴ Λεμεσό, "ὡς ἐνόχου ἐπονειδίστου ἢ ἀσυμβιβάστου πρὸς τὸ ἐπάγγελμα διαγωγῆς ἢ/καὶ διαγωγῆς *ἀντικειμένης πρὸς τοὺς περὶ Δεοντολογίας τῶν Δικηγόρων Κανονισμοὺς* ἢ καὶ ἄλλους τοιούτους" γιατὶ δέχθηκε διορισμὸ καὶ ὑπηρέτησε σὰν Ὑπουργὸς στὸ ὑπὸ τὸν κ. Νικόλαον Σαμψὼν πραξικοπηματικὸ Ὑπουργικὸ Συμβούλιο.

Ἀντίγραφο τῆς καταγγελίας ποὺ ἔγινε κοινοποιήθηκε στὸν δικηγόρο Ἀνδρέα Νεοκλέους ὁ ὁποῖος μὲ ἐπιστολή του ἡμερομηνίας 11 Ἰουλίου, 1977, μεταξὺ ἄλλων, ἰσχυρίζεται ὅτι "ἡ πολιτικὴ διαγωγὴ καὶ συμπεριφορὰ ἑνὸς δικηγόρου δὲν ἐλέγχεται ὑπὸ καὶ διὰ τῆς διαδικασίας τοῦ Πειθαρχικοῦ Συμβουλίου. Ἡ πολιτικὴ πρᾶξις δὲν εἶναι ἄσκησις δικηγορίας καὶ περαιτέρω αὐτὴ δὲν στοιχειοθετεῖ τὸ ἀποδιδόμενον ἢ οἱονδήποτε ἄλλο πειθαρχικὸ παράπτωμα".

Εἶναι χρήσιμο νὰ τονίσω ὅτι τὰ πειθαρχικὰ ἀδικήματα εἰς τὴν Κύπρο ὁρίζονται ἀπὸ τὸ ἄρθρο 17(1) τοῦ Περὶ Δικηγόρων Νόμου (Κεφ. 2 *ὅπως μεταγενέστερα τροποποιήθηκε*).

Αὐτὰ εἶναι—

(α) καταδίκη ἀπὸ ὁποιοδήποτε δικαστήριο γιὰ ποινικὸ ἀδίκημα ποὺ, κατὰ τὴν γνώμη τοῦ Πειθαρχικοῦ Συμβουλίου ἐνέχει ἠθικὴ αἰσχρότητα· καὶ

(β) ἔνοχος ἐπονείδιστης, δολίας ἢ ἀσυμβίβαστης πρὸς τὸ ἐπάγγελμα διαγωγῆς.

Ποιὰ εἶναι ἡ "ἀσυμβίβαστη πρὸς τὸ ἐπάγγελμα διαγωγὴ" καθορίζουν μεταξὺ ἄλλων οἱ περὶ Δεοντολογίας τῶν Δικηγόρων Κανονισμοὶ τοῦ 1966. Τὸ Πειθαρχικὸ Συμβούλιο τὸ ὁποῖον ἐπελήφθη τῆς πειθαρχικῆς καταγγελίας ἐναντίον τοῦ δικηγόρου Ἀνδρέα Νεοκλέους ἐξέδωσε τὴν ἀπόφαση του, ἀφοῦ ἔλαβε ὑπ' ὄψη καὶ τὲς ἀγγλικὲς αὐθεντίες, οἱ ὁποῖες ὁρίζουν πότε ἀδίκημα ἐπονείδιστης, δολίας ἢ ἀσυμβίβαστης πρὸς τὸ ἐπάγγελμα διαγωγῆς συνιστᾶ πειθαρχικὸ παράπτωμα. Τὸ Πειθαρχικὸ Συμβούλιο ἀφοῦ ἐδέχθη ὅτι διὰ νὰ ἀποτελεῖ "ἀσυμβίβαστη πρὸς τὸ ἐπάγγελμα διαγωγὴ" ἡ διαγωγὴ πρέπει νὰ σχετίζεται μὲ τὴν ἄσκηση αὐτοῦ τούτου τοῦ ἐπαγγέλματος, καὶ ὄχι νὰ ἀποτελεῖ ἐξωεπαγγελματικὴ διαγωγή, τονίζει:

"Στὴν Κύπρο δὲν ἔχομε νὰ ἐξετάσωμε κατὰ πόσο ἀνεξάρτητη ἀπὸ τὸ ἐπάγγελμα διαγωγὴ εἶναι τέτοιας φύσεως ποὺ θὰ ἦταν ἀνάρμοστη ἐὰν ἐπεδεικνύετο κατὰ τὴν ἄσκηση τοῦ ἐπαγγέλματος".

Ἀφοῦ ἐπίσης ἀναφέρθη εἰς τὲς σχετικὲς παρατηρήσεις τοῦ Λόρδου Esher, M.R., ποὺ εἶπε στὴν ὑπόθεση Allinson v. General Council of Medical Education and Registration [1894] 1 Q.B. στὲς σελίδες 760, 761, προσθέτει ὅτι "ὁ περὶ οὗ πρόκειται δικηγόρος ἀποδεχόμενος διορισμὸ ὑπουργοῦ στὴ πραξικοπηματικὴ κυβέρνηση δὲν ἐνήργησε ὑπὸ τὴν ἰδιότητα του ὡς δικηγόρος". Μὲ αὐτὸ ὡς γνώμονα τὸ Πειθαρχικὸ Συμβούλιο τονίζει:

"Στὴν παροῦσα ὑπόθεση ἐφόσο δὲν μπορεῖ νὰ ὑποστηριχθεῖ ὅτι ἡ ἀνάληψη ὑπουργικῆς θέσεως στὸ πραξικοπηματικὸ Ὑπουργικὸ Συμβούλιο ἀποτελεῖ ἀνάρμοστη μὲ τὸ ἐπάγγελμα διαγωγὴ ἢ διαγωγὴ ἐξωεπαγγελματικὴ ἡ ὁποία μπορεῖ νὰ θεωρηθεῖ σὰν δόλια, παραμένει νὰ ἐξετασθεῖ ἂν εἶναι 'ἐπονείδιστη διαγωγὴ' ὑπὸ τὴν ἔννοια τῆς διατάξεως τοῦ ἄρθρου 17(1).

Ἐνῶ γι' ἄλλα ἐπαγγέλματα οἱ σχετικοὶ Νόμοι προβλέπουν δι' 'ἀνέντιμον ἢ ἐπονείδιστον' διαγωγὴ τὸ ἄρθρο 17(1) προβλέπει μόνο γιὰ 'ἐπονείδιστον διαγωγὴ'.

Ἡ ἀνάληψη ὑπουργικοῦ ἀξιώματος στὸ πραξικομηματικὸ ὑπουργικὸ συμβούλιο ὁσονδήποτε κατακριτέα καὶ ἀξιόμεμπτη μπορεῖ νὰ εἶναι κατὰ τὴν γνώμη τοῦ Πειθαρχικοῦ Συμβουλίου δὲν ἀποτελεῖ 'ἐπονείδιστον' διαγωγὴ ὑπὸ τὴν ἔννοια τοῦ ἄρθρου 17(1) τοῦ Περὶ Δικηγόρων Νόμου.

Εἶναι ἐπίσης χαρακτηριστικὸ ὅτι ἡ ἀνάληψη ὑπουργικοῦ ἀξιώματος στὸ πραξικοπηματικὸ ὑπουργικὸ συμβούλιο δὲν ἐμπίπτει σὲ καμμιὰ ἀπὸ τὶς διατάξεις τῶν περὶ Δεοντολογίας τῶν Δικηγόρων Κανονισμῶν τοῦ 1966 ἂν καὶ αὐτοὶ δὲν εἶναι ἐξαντλητικοὶ τοῦ θέματος.

Ἡ ἀνεξάρτητη ἀπὸ τὴν ἄσκηση τοῦ ἐπαγγέλματος 'ἐπονείδιστη' διαγωγὴ πρέπει νὰ εἶναι τέτοιας σοβαρᾶς φύσεως ὥστε νὰ καθιστᾶ τὸ περὶ οὗ πρόκειται πρόσωπο ἀκατάλληλο νὰ ἐξακολουθεῖ νὰ εἶναι μέλος τοῦ ἐντίμου δικηγορικοῦ ἐπαγγέλματος.....

Τὸ Ἀνώτατο Δικαστήριο στὴ Κύπρο στὴν ὑπόθεση In re an Advocate 9 C.L.R. 11 ἀπεφάσισε ὅτι κάθε διαγωγὴ ἡ ὁ-

ποία άπετέλει κώλυμα γιά τήν έγγραφή ένός δικηγόρου μπορεί νά δικαιολογήσει καί τήν διαγραφή αύτοῦ ἐν τῷ μεταξύ".

Τελικά τό Πειθαρχικό Συμβούλιο καταλήγει:

"Γιά όλους τούς πιό πάνω λόγους τό Πειθαρχικό Συμβούλιο είναι τῆς γνώμης ὅτι ἡ καταγγελομένη πράξη δέν άποτελεί πειθαρχικό άδίκημα οὔτε σύμφωνα μέ τίς διατάξεις τοῦ ἄρθρου 17(1) οὔτε σύμφωνα μέ τίς διατάξεις τῶν περί Δεοντολογίας τῶν Δικηγόρων Κανονισμῶν τοῦ 1966 καί συνεπῶς δέν ἐμπίπτει στήν ἁρμοδιότητα τοῦ Πειθαρχιγοῦ Συμβουλίου".

Τήν 4ην Φεβρουαρίου, 1980, ὁ νέος Πρόεδρος τοῦ Δικηγορικοῦ Συλλόγου Λεμεσοῦ, ὡς παραπονούμενος, ἐφεσίβαλε τήν άπόφαση τοῦ Πειθαρχικοῦ Συμβουλίου διά τῆς ὁποίας ὁ Ἀνδρέας Νεοκλέους άπηλλάγη τῆς κατηγορίας τῆς ἐπονειδίστου ἤ άσυμβιβάστου πρός τό ἐπάγγελμα διαγωγῆς ἤ/καί διαγωγῆς άντικειμένης πρός τούς περί Δεοντολογίας τῶν Δικηγόρων Κανονισμούς διότι ἐδέχθη διορισμό καί ὑπηρέτησε ὡς ὑπουργός εἰς τό ὑπό τόν κ. Νικόλαον Σαμψών πραξικοπηματικό καί παράνομο "Ὑπουργικό Συμβούλιο".

Οἱ λόγοι ἐπί τῶν ὁποίων βασίζεται ἡ παροῦσα ἔφεση εἶναι:

(α) Ἡ άπόφαση τοῦ Πειθαρχικοῦ Συμβουλίου ὅτι "δέν μπορεί ἐπίσης νά ὑποστηριχθεῖ σοβαρά ὅτι ἡ συμμετοχή στήν πραξικοπηματική κυβέρνηση άνεξάρτητα άπό ὁποιαδήποτε ἄλλη νομική εὐθύνη ὁσονδήποτε άξιόμεμπτη καί ἄν εἶναι, άποτελεί δολία εἴτε άσυμβίβαστη πρός τό ἐπάγγελμα διαγωγή ὅπως άπαιτεῖ ὁ περί Δικηγόρων Νόμος", εἶναι ἐσφαλμένη.

(β) Ἡ άπόφαση τοῦ Πειθαρχικοῦ Συμβουλίου ὅτι "γιά νά άποτελεῖ άσυμβίβαστη πρός τό ἐπάγγελμα διαγωγή, ἡ διαγωγή πρέπει νά σχετίζεται μέ τήν ἄσκηση αὐτοῦ τούτου τοῦ ἐπαγγέλματος καί ὄχι νά άποτελεῖ ἐξωεπαγγελματική διαγωγή", εἶναι ἐσφαλμένη καί άσυμβίβαστη πρός τό ὑψηλό λειτούργημα τοῦ δικηγόρου.

(γ) Ἡ άπόφαση τοῦ Πειθαρχικοῦ Συμβουλίου ὅτι "ἡ καταγγελλομένη πράξη δέν άποτελεῖ πειθαρχικόν άδίκημα οὔτε σύμφωνα μέ τίς διατάξεις τοῦ ἄρθρου 17(1) οὔτε σύμφωνα μέ τίς διατάξεις τῶν περί Δεοντολογίας τῶν Δικηγόρων Κανονισμῶν τοῦ 1966 καί ὅτι δέν ἐμπίπτει στήν ἁρμοδιότητα τοῦ Πειθαρχικοῦ Συμβουλίου εἶναι ἐσφαλμένη.

(δ) Ἡ περί ἧς ἡ καταγγελία πράξις καί/ἤ συμπεριφορά τοῦ

ἐγκαλουμένου δικηγόρου συνιστᾶ πειθαρχικὰ ἀδικήματα δυνάμει τοῦ ἄρθρου 17(1) τοῦ Νόμου Κεφ. 2 καὶ τῶν Κανονισμῶν 2 καὶ/ἢ 3 καὶ/ἢ 4 τῶν περὶ Δεοντολογίας τῶν Δικηγόρων Κανονισμῶν, 1966 καὶ/ἢ ἄλλως πως.

Τὴν 26ην Ἀπριλίου, 1980, ὁ περὶ οὗ πρόκειται δικηγόρος ἔδωσε εἰδοποίηση ὅτι κατὰ τὴν ἀκρόαση τῆς ὑποθέσεως του θὰ ζητηθῆ ἡ ἐκδίκαση τῶν κάτωθι προδικαστικῶν νομικῶν σημείων ἢ θεμάτων:

(α) Ὅτι δὲν ὑπάρχει νομίμως ἔφεση ἐνώπιον τοῦ Ἀνωτάτου Δικαστηρίου.

(β) Ὅτι δὲν ὑπάρχει ἀδίκημα ἐπειδὴ δὲν πληροῦνται αἱ προϋποθέσεις τοῦ ἄρθρου 17(1) εἰς τὴν ὑπὸ κρίση ὑπόθεση.

(γ) Ὅτι διὰ τῆς παρόδου ἓξ ἐτῶν περίπου μεταξὺ τῆς ἀποδιδομένης πράξεως καὶ τῆς ἀποφάσεως τοῦ Πειθαρχικοῦ Συμβουλίου καὶ ἂν ὑπῆρχε ἀκόμη ἀδίκημα τοῦτο παρεγράφη.

(δ) Ὅτι ἡ ἀπόφαση τοῦ Πειθαρχικοῦ Συμβουλίου προσβάλλεται μόνον διὰ προσφυγῆς κατὰ τὸ ἄρθρον 146.1 τοῦ Συντάγματος καὶ αἱ σχετικαὶ πρόνοιαι τοῦ Περὶ Δικηγόρων Νόμου πρέπει νὰ ἑρμηνεύωνται ὑπὸ τὸ κράτος τῆς διαδικασίας τοῦ ἄρθρου 146.1.

Προτοῦ ἀσχοληθῶ μὲ τὸ μοναδικὸ προδικαστικὸ νομικὸ σημεῖο (α) μὲ τὸ ὁποῖο συνεφώνησαν ὅλοι οἱ δικηγόροι τῶν διαδίκων, καὶ ἐπετράπη ὑπὸ τοῦ Ἀνωτάτου Δικαστηρίου νὰ συζητηθῆ, εἶναι χρήσιμο νὰ τονίσω ὅτι εἰς πρόσφατη ἀπόφαση εἰς τὴν ὑπόθεση *McEniff* v. *General Dental Council* (P.C.) [1980] 1 W.L.R. 328 τὸ Ἐφετεῖο τονίζει ποῖες εἶναι οἱ κατευθυντήριες γραμμὲς ποὺ πρέπει νὰ ἀκολουθῆ τὸ Πειθαρχικὸ Συμβούλιο κατὰ τὴν ἐκδίκαση πειθαρχικῶν κατηγοριῶν καὶ τὶ ἀποτελεῖ ἀσυμβίβαστη πρὸς τὸ ἐπάγγελμα διαγωγή.

Εἰς τὴν ὑπόθεση *McEniff* v. *General Dental Council* (P.C.) [1980] 1 W.L.R. 328 ὁ Λόρδος Edmund-Davies παρατηρεῖ στὴν ἀπόφαση του στὲς σελίδες 330, 331, 332:

> "The conviction has been attacked on two grounds: (1) that the legal assessor misdirected the Disciplinary Committee as to what constituted infamous or disgraceful conduct in a professional respect;.....
>
> As to (1), reference must first be had to the opening of the case before the Disciplinary Committee by Mr. Hidden. Having outlined the facts he continued:

'May I pause now only to say one or two words on the law, of which you will be fully familiar, and no doubt you will be advised by your learned legal assessor in any event. You will remember that the test of what is infamous conduct in a professional respect was laid down clearly in the case of *Allinson* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 763. Lopes L.J. in fact devised the test, with the assistance of the other judges, and the immortal words are these: 'If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency', then it is open to the General Medical Council to say that he has been guilty of 'infamous conduct in a professional respect'. There is some assistance equally in the case of *Rex* v. *General Medical Council* [1930] 1 K.B. 562. Scrutton L.J. said at p. 569: 'It is a great pity that the word 'infamous' is used to describe the conduct of a medical practitioner who advertises. As in the case of the Bar so in the medical profession advertising is serious misconduct in a professional respect and that is all that is meant by the phrase 'infamous conduct'; it means no more than serious misconduct judged according to the rules written or unwritten governing the profession'. Your committee will be aware of the case of *Felix* v. *General Dental Council* [1960] A.C. 704'.

At the conclusion of the evidence and speeches of counsel, the legal assessor, exercising his indubitable right under rule 4 of the General Dental Council Disciplinary Committee (Legal Assessor) Rules 1957 (S.I. 1957 No. 1470) to advise the Disciplinary Committee of his own motion where it appears desirable to do so, concluded his short observations by saying:

'As far as what constitutes infamous or disgraceful conduct is concerned, to which both advocates have referred, for me the words of Scrutton L.J. of 'serious misconduct in a professional respect' mean quite

> plainly that it is for the committee, applying their own knowledge and experience, to decide what is the appropriate standard each practitioner should adhere to, not a special standard greater than is ordinarily to be expected, but the ordinary standard of the profession. I think I have said very little that is in any way new to any member of the committee, but having regard to the submissions made to you I thought I ought at least to say what I have said'.

These observations have been criticised as wrong in law that they failed to draw a distinction between mere negligent conduct and infamous or disgraceful conduct. The submission is that there was a misdirection, in that, although in his opening remarks counsel for the Disciplinary Committee had made passing reference to *Felix* v. *General Dental Council* [1960] A.C. 704, the legal assessor failed to remind the Disciplinary Committee of an important passage in the speech of Lord Jenkins, who, in delivering the judgment of this Board in that case, said at p. 720:

> 'Granted that.....the full derogatory force of the adjectives 'infamous' and 'disgraceful' in section 25 of the Act of 1957 must be qualified by the consideration that what is being judged is the conduct of a dentist in a professional respect, which falls to be judged in relation to the accepted ethical standards of his profession, it appears to their Lordships that these two adjectives nevertheless remain as terms denoting conduct deserving of the strongest reprobation, and indeed so heinous as to merit, when proved, the extreme professional penalty of striking-off'.

Although the facts in *Felix* were quite unlike of the present case, these observations are of compelling significance. For it has respectfully to be said that, although prolonged veneration of the oft-quoted words of Lopes L.J. has clothed them with an authority approaching that of a statute, they are not particularly illuminating. It is for this reason that their Lordships regard Lord Jenkins' exposition as so valuable that, without going as far as to say that his words should invariably be cited in every disciplinary case, they think that to do so would be a commendable course. But, having said that, it has to be

added that the committee in the instant case were duly reminded of decisions which have long been approved of by this Board as accurately stating the relevant law. And their Lordships have in mind in this context the following observations of Lord Guest in *Sivarajah* v. *General Medical Council* [1964] 1 W.L.R. 112, 117:

> 'The committee are masters both of the law and of the facts. Thus what might amount to misdirection in law by a Judge to a jury at a criminal trial does not necessarily invalidate the committee's decision. The question is whether it can 'fairly be thought to have been of sufficient significance to the result to invalidate the committee's decision' (*Fox* v. *General Medical Council* [1960] 1 W.L.R. 1017, 1023)'.

In their Lordships' judgment, it cannot be said that the advice tendered by the legal assessor in this case contained such a defect, and the first ground of criticism must therefore be rejected".

Θὰ ἤθελα νὰ μοῦ ἐπιτραπῆ νὰ τονίσω καὶ νὰ προσθέσω ὅτι οἱ παρατηρήσεις τοῦ Λόρδου Jenkins εἶναι τόσο πολύτιμες καὶ τόσο χρήσιμες ποὺ κατὰ τὴν γνώμη μου πρέπει νὰ ἀναφέρονται εἰς ὅλες τὲς ἀποφάσεις τοῦ ἑκάστοτε Πειθαρχικοῦ Συμβουλίου. Ὅπως ἀνάφερα προηγουμένως τὸ μοναδικὸ προδικαστικὸ νομικὸ σημεῖο εἶναι ὅτι δὲν ὑπάρχει νομίμως ἔφεση ἐνώπιον τοῦ Ἀνωτάτου Δικαστηρίου. Πιστεύω ὅτι προτοῦ ἀσχοληθῶ μὲ τὶς ἀγορεύσεις τῶν συνηγόρων θὰ ἦτο χρήσιμο νὰ ἐξετάσω ποῖαι εἶναι αἱ ἐξουσίαι τοῦ Πειθαρχικοῦ Συμβουλίου γιὰ τὴν ἐπιβολὴ κυρώσεων ἐναντίον δικηγόρων. Τὸ Ἄρθρον 17(2) τοῦ Περὶ Δικηγόρων Νόμου, (Κεφ. 2) τὸ ὁποῖον παραμένει ὡς εἶχε, ὁρίζει:

"(2) Proceedings to enforce any of the penalties provided by subsection (1) may be commenced—

(a) by the Disciplinary Board of its own motion;

(b) by the Attorney-General;

(c) on a report made to the Disciplinary Board by any Court or a Chairman of a Local Bar Committee;

(d) by an application, with the leave of the Disciplinary Board, of any person aggrieved by the conduct of the advocate".

Τὸ 1975 ἡ Βουλὴ τῶν Ἀντιπροσώπων ἐψήφισε τὸν Νόμον 40/75 ποὺ ὁρίζει ὅτι ὁ παρὼν Νόμος θὰ ἀναφέρεται ὡς ὁ Περὶ Δικηγόρων (Τροποποιητικὸς) Νόμος τοῦ 1975 καὶ θὰ ἀναγιγνώσκεται ὁμοῦ μετὰ τοῦ Περὶ Δικηγόρων Νόμου (ἐν τοῖς ἑφεξῆς ἀναφερομένου ὡς ὁ "βασικὸς Νόμος"). Τὸ Ἄρθρον 17(4) καὶ (5) τοῦ βσικοῦ νόμου προβλέπει:

"(4) Ὁ Γενικὸς Εἰσαγγελεὺς τῆς Δημοκρατίας, ὁ καταδικασθεὶς ἢ ὁ παραπονούμενος δύναται ἐντὸς δύο μηνῶν ἀπὸ τῆς ἐκδόσεως τῆς ἀποφάσεως ὑπὸ τοῦ Πειθαρχικοῦ Συμβουλίου νὰ ἐφεσιβάλῃ ταύτην, συμφώνως πρὸς τὴν ἐπὶ τούτῳ ὑπὸ ἐκδιδομένου διαδικαστικοῦ κανονισμοῦ ὑπὸ τοῦ Ἀνωτάτου Δικαστηρίου προβλεπομένην διαδικασίαν, εἰς τὸ Ἀνώτατον Δικαστήριον τὸ ὁποῖον συμφώνως πρὸς τὸν ρηθέντα διαδικαστικὸν κανονισμὸν προβαίνει εἰς ἀκρόασιν τῆς ἐφέσεως καὶ κέκτηται ἐξουσίαν ὅπως εἴτε ἐπικυρώσῃ τὴν ἀπόφασιν τοῦ Πειθαρχικοῦ Συμβουλίου εἴτε ἀκυρώσῃ ἢ τροποποιήσῃ ταύτην ἢ ἐκδώσῃ ἕτερον διάταγμα ὡς ἤθελε θεωρήσει πρέπον.

(5) Παρὰ τὰς διατάξεις τοῦ ἐδαφίου (4) τὸ Ἀνώτατον Δικαστήριον κέκτηται ἐξουσίαν ὅπως αὐτεπαγγέλτως ἀναθεωρῇ, συμφώνως πρὸς τὴν ἐπὶ τούτῳ, προβλεπομένην διαδικασίαν ὑφ' οἱουδήποτε διαδικαστικοῦ κανονισμοῦ, οἱανδήποτε ἀπόφασιν τοῦ Πειθαρχικοῦ Συμβουλίου διὰ πειθαρχικὸν ἀδίκημα τελεσθὲν ἐντὸς τοῦ δικαστικοῦ κτιρίου ἢ ἀφορῶν μέλος οἱουδήποτε δικαστηρίου καὶ κέκτηται ἐξουσίαν ὅπως εἴτε ἐπικυρώσῃ τὴν ἀπόφασιν τοῦ Πειθαρχικοῦ Συμβουλίου εἴτε ἀκυρώσῃ ἢ τροποποιήσῃ ταύτην ἢ ἐκδώσῃ ἕτερον διάταγμα ὡς ἤθελε θεωρήσει πρέπον".

Θὰ ἦτο χρήσιμο νὰ τονίσω ὅτι ἂν συγκρίνουμε τὸ ἐδάφιο (4) μὲ τὸ ἐδάφιο (2) τοῦ Ἄρθρου 17 τοῦ Περὶ Δικηγόρων Νόμου (Κεφ. 2) φαίνεται ἀμέσως ὅτι τὸ Πειθαρχικὸ Συμβούλιο δύναται σύμφωνα μὲ τὸ ἐδάφιο (2) νὰ ἀρχίσῃ διαδικασία ἐπιβολῆς ποινῆς, ἀλλὰ κατὰ τὸ ἐδάφιο (4) δὲν δύναται νὰ ἐφεσιβάλῃ ἀπόφαση του. Ἐπαναλαμβάνω ὅμως ὅτι ὁ Γενικὸς Εἰσαγγελεὺς δύναται νὰ ἀρχίσῃ διαδικασία καὶ νὰ ἐφεσιβάλῃ ἀπόφαση τοῦ Πειθαρχικοῦ Συμβουλίου.

Ὁ κ. Παπαφιλίππου διὰ τὸν ἐγκαλούμενον δικηγόρον ἰσχυρίσθη (α) ὅτι ἐν ἀντιθέσει μὲ τὸ δικαίωμα τοῦ Γενικοῦ Εἰσαγγελέα τόσο τὸ Δικαστήριο ὅσο ὁ Πρόεδρος τοπικοῦ δικηγορικοῦ συλλόγου δὲν δύνανται οὔτε νὰ ἀρχίσουν διαδικασία οὔτε νὰ ἐφεσιβάλουν ἀπόφαση τοῦ Πειθαρχικοῦ Συμβουλίου διότι, κατὰ τὴν γνώμη

τοῦ συνηγόρου, τὸ ἐδάφιον (2)(c) τοῦ Ἄρθρου 17 δὲν προβλέπει ὅτι ἡ διαδικασία δύναται νὰ ἀρχίση ὑπὸ τοῦ Δικαστηρίου ἢ ὑπὸ τοῦ Προέδρου τοῦ τοπικοῦ δικηγορικοῦ συλλόγου ὡς εἰς τὰς περιπτώσεις τοῦ Πειθαρχικοῦ Συμβουλίου καὶ τοῦ Γενικοῦ Εἰσαγγελέα. Περαιτέρω ὁ συνήγορος ὑπέβαλε ὅτι ἐὰν ὁ νομοθέτης ἐπεθύμη νὰ καταστήση τὸ Δικαστήριο ἢ τὸν Πρόεδρο Ἐπιτροπῆς τοπικοῦ δικηγορικοῦ συλλόγου διάδικον θὰ προέβλεπε τοῦτο, καὶ ἰσχυρίσθη ὅτι λογικῶς δὲν ὑπῆρχε πρόθεση νὰ καταστήση τὸ Δικαστήριο διάδικο οὔτε καὶ τὸν Πρόεδρον Ἐπιτροπῆς τοπικοῦ δικηγορικοῦ συλλόγου. Ἐν τούτοις ὑπεστηρίχθη ἐπίσης ὅτι καὶ οἱ δύο ἀντὶ νὰ ἐνεργήσουν ὡς διάδικοι ἔχουν δικαίωμα νὰ ὑποβάλουν ἔκθεση εἰς τὸ Πειθαρχικὸ Συμβούλιο τὸ ὁποῖον ἔχει ἐξουσία νὰ ἀρχίση τὴν διαδικασία. Ἡ διαφορὰ τοῦ ἐδαφίου (2)(α) ἐκ τοῦ (2)(c) καταλήγει ὁ συνήγορος εἶναι ὅτι εἰς μὲν τὴν περίπτωση τοῦ ἐδαφίου (2)(α) τὸ Πειθαρχικὸ Συμβούλιο ἐνεργεῖ αὐτεπαγγέλτως εἰς δὲ τὴν περίπτωση τοῦ ἐδαφίου (2)(c) τὸ Πειθαρχικὸ Συμβούλιο ἐνεργεῖ κατόπιν ἐκθέσεως εἴτε παρὰ τοῦ Δικαστηρίου εἴτε παρὰ τοῦ Προέδρου τοπικοῦ δικηγορικοῦ συλλόγου.

Τὸ ἐρώτημα τὴ ὁποῖον τίθεται εἶναι ποῖος εἶναι ὁ παραπονούμενος· εἰς τὴν παροῦσαν ὑπόθεση. Παρόλο ποὺ θὰ ἦτο πλεονασμὸς εἶμαι τῆς γνώμης ὅτι ἐκ τῆς συγκρίσεως τῶν ἐδαφίων (2) καὶ (4) τοῦ Ἄρθρου 17 καὶ ἐκ τῆς λογικῆς ἑρμηνείας τοῦ ἐδαφίου (4) οἱ μόνοι οἱ ὁποῖοι μποροῦν νὰ ἐφεσιβάλουν εἶναι ὁ Γενικὸς Εἰσαγγελέας, ὁ καταδικασθεὶς καὶ ὁ παραπονούμενος. Κατὰ τὴν γνώμη μου ἡ λέξη παραπονούμενος δὲν μπορεῖ παρὰ νὰ σημαίνη πρόσωπο τὸ ὁποῖον ἐζήτησε ἔναρξη διαδικασίας κατὰ τὸ ἐδάφιον (2)(δ) καὶ δὲν περιλαμβάνει τὰ πρόσωπα τὰ ἀναφερόμενα εἰς τὸ ἐδάφιο (2)(γ), ἤτοι τὸν Πρόεδρον Ἐπιτροπῆς τοπικοῦ δικηγορικοῦ συλλόγου. Εἶναι ἐπίσης ὀρθὸ νὰ λεχθῆ ὅτι ὁ Πρόεδρος τοῦ δικηγορικοῦ συλλόγου ὅταν ὑποβάλλει ἔκθεση κατὰ τὸ ἄρθρον 17(2)(γ) οὗτος δὲν καθίσταται διάδικος τῆς πειθαρχικῆς διαδικασίας ἐπειδὴ ὑποβάλλει καταγγελία, ἀλλὰ ἐπὶ τῇ βάσει τῆς καταγγελίας τὸ Πειθαρχικὸ Συμβούλιο θέτει εἰς ἐφαρμογὴ τὸ μηχανισμὸ καὶ διεξάγει τὴν πειθαρχικὴ διαδικασία. Θὰ ἦτο παράλειψη νὰ μὴν ἀναφέρω ὅτι τόσο τὸ Δικαστήριο ἢ καὶ ὁ Πρόεδρος τοῦ τοπικοῦ δικηγορικοῦ συλλόγου δὲν δύνανται νὰ εἶναι διάδικοι ὥστε νὰ τοὺς παρέχεται τὸ δικαίωμα ὑποβολῆς ἐφέσεως.

Ἀντιθέτως ὁ κ. Παύλου εἰς μία μακρὰ καὶ ἐμπεριστατωμένη

ἀγόρευση ὑπεστήριξε, μεταξὺ ἄλλων ἀφοῦ ἀνεφέρθη εἰς διάφορα λεξικὰ πρὸς ἐνίσχυση τῆς ἐπιχειρηματολογίας του, ὅτι ὁ Πρόεδρος τοῦ ἑκάστοτε τοπικοῦ δικηγορικοῦ συλλόγου ἔχει δικαίωμα νὰ καταχωρήση ἔφεση καὶ ὅτι ὁ Πρόεδρος πρέπει νὰ θεωρεῖται παθὼν ἢ πρόσωπο ζημιωθὲν ἐφ' ὅσον εἶχε ἐξουσιοδοτηθῆ ἀπὸ τὴν ὁλομέλεια τῶν μελῶν τοῦ τοπικοῦ δικηγορικοῦ συλλόγου. Ὁ κ. Παύλου ὁ ὁποῖος ὅπως ἀνάφερα προηγουμένως ὑπεστήριξε σθεναρὰ τὴν ἐπιχειρηματολογία του κατέληξε νὰ τονίση ἐμφαντικὰ ὅτι ἐὰν ὁ Πρόεδρος τοῦ Δικηγορικοῦ Συλλόγου Λεμεσοῦ ποὺ ἐκπροσωπεῖ τὴν θέληση τῆς γενικῆς συνέλευσης τῶν δικηγόρων Λεμεσοῦ δὲν μπορεῖ νὰ θεωρηθῆ παραπονούμενος τότε οἱ λέξεις χάνουν τὴν σημασία τους. Καταλήγοντας ὁ κ. Παύλου ὑπεστήριξε ὅτι τὸ δικαίωμα ἐφέσεως δὲν μπορεῖ νὰ καταστρατηγηθῆ ἐξ' αἰτίας τῆς ἐλλείψεως ὡρισμένων διαδικαστικῶν κανονισμῶν.

Ὁ κ. Κληρίδης ἀγορεύων υἱοθέτησε τὴν ἐπιχειρηματολογία τοῦ κ. Παπαφιλίππου καὶ ἰσχυρίσθη ὅτι ὁ Πρόεδρος τοῦ τοπικοῦ Δικηγορικοῦ Συλλόγου Λεμεσοῦ δὲν μπορεῖ νὰ εἶναι παθὼν ἢ ζημιωθὴς καὶ συνεπῶς δὲν μπορεῖ νὰ εἶναι διάδικος τόσον ἐνώπιον τοῦ Πειθαρχικοῦ Συμβουλίου ὅσον καὶ ἐνώπιον τοῦ Ἀνωτάτου Δικαστηρίου. Περαιτέρω ὁ κ. Κληρίδης εἰσηγήθη ὅτι καὶ ἂν ἀκόμη ὑπῆρχε δικαίωμα ἐφέσεως δὲν ἠδύνατο νὰ ἀρχίση ἡ ἔφεση ἐναντίον ἀθωωτικῆς ἀποφάσεως ἄνευ τῆς ἀδείας τοῦ Γενικοῦ Εἰσαγγελέα.

Διὰ ἀκόμη μία φορὰ θὰ ἤθελα νὰ τονίσω ὅτι τὸ Ἀνώτατο Δικαστήριο ἐκλήθη νὰ ἀποφασίση ἕνα καὶ μόνο προδικαστικὸ νομικὸ σημεῖο, ἤτοι ὅτι δὲν ὑπάρχει νομίμως ἔφεση ἐνώπιον τοῦ Δικαστηρίου καὶ τίποτε περισσότερο.

Ἀφοῦ ἐξέτασα πολὺ προσεκτικὰ τὸ σύνολο τῶν ἀγορεύσεων τῶν συνηγόρων κατέληξα εἰς τὸ συμπέρασμα (α) ὅτι ὁ Πρόεδρος τοῦ τοπικοῦ δικηγορικοῦ συλλόγου δὲν δύναται νὰ θεωρεῖται ὡς παραπονούμενος διότι κατὰ τὴ γνώμη μου δὲν θεωρεῖται ὡς παραπονούμενος ἐντὸς τῆς ἐννοίας τοῦ ἄρθρου 17(4) τοῦ Νόμου 40/75, ὡς ἐπίσης καὶ διὰ τοὺς λόγους ποὺ ἀνέφερα ἐνωρίτερο· (β) ἐπαναλαμβάνω ὅτι ἡ ὀρθὴ ἑρμηνεία τοῦ ἄρθρου 17(4) τοῦ βασικοῦ νόμου ἐξυπακούει ὅτι ὁ "παραπονούμενος" δὲν δύναται νὰ εἶναι τὸ Δικαστήριο ἢ ὁ Πρόεδρος τοῦ τοπικοῦ συλλόγου, διότι παραπονούμενος εἶναι ἐκεῖνος ὁ ὁποῖος ὑπέστη πραγματικὴ ζημία σύμφωνα μὲ τὸ ἄρθρο 17(2)(δ). Εἰς τὴ παροῦσα ὑπόθεση δύνανται νὰ ἐφεσιβάλουν τὴν ἀπόφαση τοῦ Πειθαρχικοῦ Συμβουλίου ἐκτὸς τοῦ παραπονουμένου, ὁ καταδικασθεὶς καὶ ὁ Γενικὸς

Εἰσαγγελέας. Εἰλικρινὰ πιστεύω ὅτι ἡ ἀνάμιξη καὶ τοῦ Δικαστηρίου ἐὰν εἶχε δικαίωμα ἐφέσεως, ὡς παραπονούμενος, θὰ ἐδημιουργοῦσε περισσότερα προβλήματα διὰ τὸ κῦρος τῶν Δικαστηρίων.

Διὰ τοὺς λόγους τοὺς ὁποίους ἀνέφερα, καὶ ἐφ' ὅσο δὲν δύναται ὁ Πρόεδρος τοῦ τοπικοῦ Δικηγορικοῦ Συλλόγου νὰ ἐφαρμοσιβάλη τὴν ἀπόφαση, πιστεύω ὅτι δὲν ὑπάρχει νομίμως ἔφεση ἐνώπιον τοῦ Δικαστηρίου.

Θὰ ἦτο ὅμως; ἀδιανόητο προτοῦ συμπληρώσω τὴν ἀπόφαση μου νὰ μὴν ἐκφράσω θερμὲς εὐχαριστίες πρὸς ὅλους τοὺς συνηγόρους οἱ ὁποῖοι μὲ ἐβοήθησαν νὰ ἑτοιμάσω τὴν ἀπόφαση μου.

Διὰ ὅλους τοὺς μομικοὺς λόγους τοὺς ὁποίους ἀνέφερα ἡ ἔφεση ἀπορρίπτεται, ἀλλὰ ἄνευ ἐξόδων.

This is an English translation of the judgment in Greek appearing at pp. 414–425 *ante*.

HADJIANASTASSIOU J.: On October 25, 1975 the Chairman of the Limassol Bar Committee by means of a letter submitted a complaint to the Disciplinary Board under section 17(2)(c) of the Advocates Law, Cap. 2 (as amended) against advocate Andreas Neocleous, of Limassol "as guilty of disgraceful or unprofessional conduct and/or conduct contrary to the Advocates Practice and Etiquette Rules and/or other such Rules" because he accepted appointment and served as a Minister under Mr. Nicolaos Sampson in the Council of Ministers which was formed as a result of the Coup d'etat.

Copy of the complaint was communicated to advocate Andreas Neocleous who by his letter dated 11th July, 1977, amongst others, he alleges that "the political conduct and behaviour of an advocate cannot be subjected to the control of, and the procedure, of the Disciplinary Board. The political act does not amount to practising as an advocate and moreover it does not constitute the disciplinary offence alleged or any other disciplinary offence".

It is useful to stress that disciplinary offences in Cyprus are defined by section 17(1) of the Advocates Law (Cap. 2 as amended subsequently).

They are—

(a) Conviction by any Court of a Criminal offence which, in the opinion of the Disciplinary Board, involves moral turpitude; and

(b) guilty of disgraceful, fraudulent or unprofessional conduct.

What is "unprofessional conduct" is defined, amongst others, by the Advocates Practice and Etiquette Rules, 1966. The Disciplinary Board which tried the complaint against advocate Andreas Neocleous delivered its judgment, having taken into consideration the English authorities as well, which define when an offence of disgraceful, fraudulent or unprofessional conduct constitutes a disciplinary offence. The Disciplinary Board having accepted that for "unprofessional conduct" to exist such conduct should be connected with the exercise of the profession as such, and not to constitute conduct outside the profession, stresses:

> "In Cyprus we do not have to examine whether conduct not connected with the profession is of such a nature which would be unprofessional if displayed in the exercise of the profession".

Having also referred to the relevant observations of Lord Esher M.R. in the case of *Allinson* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. pp. 760, 761 it adds: "The advocate in question by accepting the appointment of a Minister in the Coup d'etat Government has not acted in the capacity of an advocate". With this in mind the Disciplinary Board stresses:

> "In this case since it cannot be argued that the undertaking of a ministerial office in the Coup d'etat Council of Ministers constitutes unprofessional conduct or conduct not connected with the profession which can be considered as fraudulent, it remains to consider whether it is 'disgraceful conduct' within the meaning of section 17(1).
>
> Whilst in respect of other professions the relevant Laws provide for dishonest or disgraceful conduct section 17(1) provides only for disgraceful conduct.
>
> The undertaking of the office of a Minister in the Coup

d'etat Council of Ministers however reproachful and blamable it might be, in the opinion of the Disciplinary Board it does not constitute 'disgraceful' conduct within the meaning of section 17(1) of the Advocates Law.

It is also characteristic that the undertaking of a ministerial office in the Coup d'etat Council of Ministers does not fall within any of the provisions of the Advocates Practice and Etiquette Rules, 1966 though they are not exhaustive on the matter.

Disgraceful conduct not connected with the exercise of the profession should be of such a serious nature so as to render the person in question unsuitable to continue to be a member of the honourable legal profession.....

In Cyprus the Supreme Court in the case of *In re* an *Advocate*, 9 C.L.R. 11 held that conduct which constitutes an impediment for the enrolment of an advocate may justify his striking off in the meantime".

Finally the Disciplinary Board concludes:

"For all the above reasons the Disciplinary Board is of opinion that the act complained of does not constitute a disciplinary offence in accordance with the provisions of section 17(1) or in accordance with the provisions of the Advocates Practice and Etiquette Rules, 1966 and consequently it does not come within the competence of the Disciplinary Board".

On the 4th February, 1980, the new Chairman of the Limassol Bar Committee, as complainant, appealed against the decision of the Disciplinary Board by means of which Andreas Neocleous was acquitted of the charge of disgraceful or unprofessional conduct and/or conduct contrary to the Advocates Practice and Etiquette Rules because he accepted an appointment and served as a Minister in the illegal "Council of Ministers" formed as a result of the Coup d'etat by Mr. Nicolaos Sampson.

The grounds of appeal are:

(a) The decision of the Disciplinary Board that "it cannot also be seriously argued that participation in the Coup d'etat Government independently of any other legal liability however blamable it might be, constitutes

either fraudulent or unprofessional conduct as provided by the Advocates Law" is wrong.

(b) The decision of the Disciplinary Board that "for conduct to constitute unprofessional conduct, such conduct should be connected with the exercise of the profession as such and not to constitute conduct not connected with the profession" is wrong and inconsistent with the high office of an advocate.

(c) The decision of the Disciplinary Board that "the act complained of does not constitute a disciplinary offence in accordance with the provisions of section 17(1) or in accordance with the provisions of the Advocates Practice and Etiquette Rules 1966 and that it does not come within the competence of the Disciplinary Board", is wrong.

(d) The act complained of and/or the conduct of the respondent advocate constitute disciplinary offences under section 17(1) of the Law Cap. 2 and or rules 2 and/or 3 and/or 4 of the Advocates Practice and Etiquette Rules, 1966 and/or otherwise.

On the 26th April, 1980, the advocate in question gave notice that at the hearing of his case he will apply for the trial of the following preliminary points of law or questions:

(a) That there is not in law an appeal before the Supreme Court.

(b) That there is no offence because the prerequisites of section 17(1) are not fulfilled in this case.

(c) That by the lapse of about six years between the act complained of and the decision of the Disciplinary Board even if there existed an offence same has been prescribed.

(d) That the decision of the Disciplinary Board can only be attacked by means of a recourse under Article 146.1 of the Constitution and the relevant provisions of the Advocates Law should be interpreted subject to the procedure envisaged by Article 146.1.

Before dealing with the only preliminary point of Law (a) on which there was agreement by all counsel and leave was given by the Supreme Court to be argued, it is useful to stress that in a recent judgment in the case of *McEniff* v. *General Dental Council* (P.C.) [1980] 1 W.L.R. 328 the Court of Appeal stresses which are the guide lines which should be followed by the Disciplinary Board at the trial of disciplinary charges and what constitutes unprofessional conduct.

In the case of *McEniff* v. *General Dental Council* (P.C.) [1980] 1 W.L.R. 328 Lord Edmund-Davies observes the following in his judgment at pp. 330, 331, 332:

> "The conviction has been attacked on two grounds: (1) that the legal assessor misdirected the Disciplinary Committee as to what constituted infamous or disgraceful conduct in a professional respect;.....
>
> As to (1), reference must first be had to the opening of the case before the Disciplinary Committee by Mr. Hidden. Having outlined the facts he continued:
>
> 'May I pause now only to say one or two words on the law, of which you will be fully familiar, and no doubt you will be advised by your learned legal assessor in any event. You will remember that the test of what is infamous conduct in a professional respect was laid down clearly in the case of *Allinson* v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 763. Lopes L.J. in fact devised the test, with the assistance of the other Judges, and the immortal words are these: 'If it is shown that a medical man, in the pursuit of his profession, has done something with regard to it which would be reasonably regarded as disgraceful or dishonourable by his professional brethren of good repute and competency', then it is open to the General Medical Council to say that he has been guilty of 'infamous conduct in a professional respect'. There is some assistance equally in the case of *Rex* v. *General Medical Council* [1930] 1 K.B. 562. Scrutton L.J. said at p. 569: 'It is a great pity that the word 'infamous' is used to describe the conduct of a medical practitioner who advertises. As in the case of the Bar so in the medical profession

advertising is serious misconduct in a professional respect and that is all that is meant by the phrase 'infamous conduct'; it means no more than serious misconduct judged according to the rules written or unwritten governing the profession'. Your committee will be aware of the case of *Felix* v. *General Dental Council* [1960] A.C. 704'.

At the conclusion of the evidence and speeches of counsel, the legal assessor, exercising his indubitable right under rule 4 of the General Dental Council Disciplinary Committee (Legal Assessor) Rules 1957 (S.I. 1957 No. 1470) to advise the Disciplinary Committee of his own motion where it appears desirable to do so, concluded his short observations by saying:

'As far as what constitutes infamous or disgraceful conduct is concerned, to which both advocates have referred, for me the words of Scrutton L.J. of 'serious misconduct in a professional respect' mean quite plainly that it is for the committee, applying their own knowledge and experience, to decide what is the appropriate standard each practitioner should adhere to, not a special standard greater than is ordinarily to be expected, but the ordinary standard of the profession. I think I have very little that is in any way new to any member of the committee, but having regard to the submissions made to you I thought I ought at least to say what I have said.'

These observations have been criticised as wrong in law that they failed to draw a distinction between mere negligent conduct and infamous or disgraceful conduct. The submission is that there was a misdirection, in that, although in his opening remarks counsel for the Disciplinary Committee had made passing reference to *Felix* v. *General Dental Council* [1960] A.C. 704, the legal assessor failed to remind the Disciplinary Committee of an important passage in the speech of Lord Jenkins, who, in delivering the judgment of this Board in that case, said at p. 720:

'Granted that..... the full derogatory force of the adjectives 'infamous' and 'disgraceful' in section 25 of the Act of 1957 must be qualified by the consi-

deration that what is being judged is the conduct of a dentist in a professional respect, which falls to be judged in relation to the accepted ethical standards of his profession, it appears to their Lordships that these two adjectives nevertheless remain as terms denoting conduct deserving of the strongest reprobation, and indeed so heinous as to merit, when proved, the extreme professional penalty of striking-off'.

Although the facts in *Felix* were quite unlike of the present case, these observations are of compelling significance. For it has respectfully to be said that, although prolonged veneration of the oft-quoted words of Lopes L.J. has clothed them with an authority approaching that of a statute, they are not particularly illuminating. It is for this reason that their Lordships regard Lord Jenkins' exposition as so valuable that, without going as far as to say that his words should invariably be cited in every disciplinary case, they think that to do so would be a commendable course. But, having said that, it has to be added that the committee in the instant case were duly reminded of decisions which have long been approved of by this Board as accurately stating the relevant law. And their Lordships have in mind in this context the following observations of Lord Guest in *Sivarajah* v. *General Medical Council* [1964] 1 W.L.R. 112, 117:

'The committee are masters both of the law and of the facts. Thus what might amount to misdirection in law by a Judge to a jury at a criminal trial does not necessarily invalidate the committee's decision. The question is whether it can 'fairly be thought to have been of sufficient significance to the result to invalidate the committee's decision' (*Fox* v. *General Medical Council* [1960] 1 W.L.R. 1017, 1023)'.

In their Lordships' judgment, it cannot be said that the advice tendered by the legal assessor in this case contained such a defect, and the first ground of criticism must therefore be rejected".

I would like to be allowed to stress and add that the observations of Lord Jenkins are so valuable and so useful that in my opinion they should be included in all the decisions of Disci-

plinary Boards. As stated earlier the only preliminary question of law is that there is not in law an appeal before the Supreme Court. I believe that before dealing with the addresses of counsel it would be expedient to consider which are the powers of the Disciplinary Board for the imposition of sanctions against advocates. Section 17(2) of the Advocates Law, Cap. 2, which remained as it was, provides:

"(2) Proceedings to enforce any of the penalties provided by subsection (1) may be commenced—

(a) by the Disciplinary Board of its own motion;

(b) by the Attorney-General;

(c) on a report made to the Disciplinary Board by any Court or a Chairman of a Local Bar Committee;

(d) by an application, with the leave of the Disciplinary Board, of any person aggrieved by the conduct of the advocate".

In 1975 the House of Representatives enacted Law 40/75 which provides that this Law will be cited as the Advocates (Amendment) Law, 1975 and will be read together with the Advocates Law (hereinafter referred to as "the basic law"). Section 17(4) and (5) of the basic Law provides:

"(4) The Attorney-General of the Republic, the convicted advocate or the complainant may within two months of the delivery of the decision by the Disciplinary Board, appeal to the Supreme Court, in accordance with the procedure prescribed by Rules issued by the Supreme Court in this respect, which, in accordance with the aforesaid Rules proceeds to the hearing of the appeal and is vested with the power to either confirm the decision of the Disciplinary Board or set aside or modify it or issue such other order as it may deem fit.

(5) Notwithstanding the provisions of subsection (4) the Supreme Court has power to review, of its own motion, in accordance with the procedure provided in this respect by any Rules of Court, any decision of the Disciplinary Board relating to a disciplinary offence committed within the Court building or relating to a member of any Court and has power either to confirm the decision of the Disci-

plinary Board or to set aside or modify it or make any order as it may deem fit".

It would be useful to stress that if we compare sub-section (4) of section 17 of the Advocates Law, Cap. 2 with sub-section (2) it is clear that the Disciplinary Board may, in accordance with sub-section (2), commence proceedings for the imposition of sentence, but in accordance with sub-section (4) it cannot appeal against its decision. I repeat however that the Attorney-General may commence proceedings and appeal against a decision of the Disciplinary Board.

Mr. Papaphilippou for the respondent advocate contended (a) that contrary to the right of the Attorney-General both the Court and the Chairman of the Local Bar Committee can neither commence proceedings nor appeal against a decision of the Disciplinary Board because, in the opinion of Counsel, sub-section (2)(c) of section 17 does not provide that the proceedings can be commenced by the Court or by the Chairman of the local bar Association as in the cases of the Disciplinary Board and the Attorney-General. Further counsel submitted that if the legislator wished to render the Court or the Chairman of the local Bar Committee a litigant it would have so provided, and alleged that logically there was no intention to render the Court a litigant nor the Chairman of a local Bar Committee. It was nevertheless argued that both instead of acting as litigants have a right to submit a complaint to the Disciplinary Board which has power to commence the proceedings. The difference between sub-section (2)(a) and (2)(c), counsel concludes, is that in the case of sub-section (2)(a) the Disciplinary Board acts on its own motion and in the case of sub-section (2)(c) the Disciplinary Board acts upon a complaint either from the Court or from the Chairman of a local Bar Committee.

The question which arises is who is the complainant in this case. Though it would have been superfluous I am of opinion that by a comparison of sub-sections (2) and (4) of section 17 and from the reasonable interpretation of sub-section (4) the only ones who can appeal are the Attorney-General, the person convicted and the complainant. In my opinion the word complainant cannot but mean

a person who applied for the commencement of proceedings in accordance with sub-section (2)(d) and does not include the persons mentioned in sub-section (2)(c), that is the Chairman of a local Bar Committee. It is also correct to say that when the Chairman of the Bar submits a complaint in accordance with section 17(2)(c) he is not rendered a litigant in the disciplinary proceedings because he submits a report, but on the basis of the report the Disciplinary Board sets the machinery in motion and carries out the disciplinary proceedings. It would have been an omission not to state that both the Court and the Chairman of the local Bar Committee cannot be litigants so as to be granted the right of appeal.

On the contrary Mr. Pavlou in a long and detailed address having referred to various dictionaries, in support of his argument, he argued, *inter alia*, that the Chairman of the local Bar Committee has a right to lodge an appeal and that the Chairman should be deemed as a complainant or person aggrieved since he had been authorised by all the members of the local Bar Association. Mr. Pavlou who, as already stated, strongly supported his argument concluded by stressing emphatically that if the Chairman of the Limassol Bar Committee, who represents the will of the general meeting of the Limassol advocates, cannot be deemed as a complainant then the words are deprived of their meaning. In concluding Mr. Pavlou argued that the right of appeal cannot be infringed due to the absence of certain Rules of Court.

Mr. Clerides in his address adopted the argument of Mr. Papaphilippou and alleged that the Chairman of the local Bar Committee Limassol cannot be a complainant or person aggrieved and consequently he cannot be a litigant both before the Disciplinary Board and the Supreme Court. Further Mr. Clerides submitted that even if there existed a right of appeal the appeal against a decision of acquittal could not commence without the sanction of the Attorney-General.

I would like to stress once again that the Supreme Court was called upon to decide one and only preliminary issue, that there is not in law an appeal before the Court and nothing more.

Having considered very carefully the whole of the addresses I came to the conclusion (a) that the Chairman of the local Bar

Committee cannot be considered as a complainant because in my opinion he is not considered as a complainant within the meaning of section 17(4) of Law 40/75, as well as for the reasons stated above; (b) I repeat that the correct interpretation of section 17(4) of the basic law implies that the "complainant" cannot be the Court or the Chairman of the local Bar Committee, because the complainant is the one who sustained real damage in accordance with section 17(2)(d). In this case, besides the complainant, the decision of the Disciplinary Board may be appealed against by the person convicted and the Attorney-General. I sincerely believe that the mixing up of the Court also if it had a right of appeal, as a complainant, would have created more problems to the prestige of the Courts.

For the reasons stated and since the Chairman of the local Bar Committee cannot appeal against this decision, I believe that there is not in law an appeal before the Court.

It would however been unthinkable, before completing my judgment, not to express my warm thanks to all Counsel who helped me in preparing my judgment.

For all the grounds of law stated above the appeal is dismissed but without costs.

MALACHTOS J. The respondent in this appeal, ap ractising advocate in Limassol, was on the 9th day of January, 1980, acquitted upon a charge of a disciplinary offence under section 17(1) of the Advocates Law, Cap. 2, by the Disciplinary Board established under section 16 of the said Law.

The charge was initiated by letter dated 25th October, 1976, from the then Chairman of the local Bar Committee of Limassol to the Chairman of the Disciplinary Board. This letter reads as follows:-

"Ὑπὸ τὴν ἰδιότητά μου ὡς Προέδρου τοῦ Δικηγορικοῦ Συλλόγου Λεμεσοῦ καὶ δυνάμει τῶν ἐξουσιῶν δι' ὧν περιβέβλημαι δυνάμει τῆς παραγράφου (γ) τοῦ ἐδαφίου (2) τοῦ ἄρθρου 17 τοῦ περὶ Δικηγόρων Νόμου ΚΕΦ. 2 (ὡς ἐτροποποιήθη) διὰ τῆς παρούσης καταγγέλλω τὸν συνάδελφον Ἀνδρέαν Νεοκλέους ἐκ Λεμεσοῦ, ὡς ἔνοχον ἐπονειδίστου ἢ ἀσυμβιβάστου πρὸς τὸ ἐπάγγελμα διαγωγῆς ἢ/καὶ διαγωγῆς ἀντικειμένης πρὸς τοὺς περὶ Δεοντολογίας τῶν Δικηγό-

ρων κανονισμούς καὶ δὴ τοὺς κανονισμοὺς 2, 3 καὶ 4 ἢ/καὶ ἄλλους τοιούτους διότι ἐδέχθη διορισμὸν καὶ ὑπηρέτησε ὡς Ὑπουργὸς εἰς τὸ ὑπὸ τὸν κ. Νικόλαον Σαμψὼν πραξικοπηματικὸν καὶ παράνομον Ὑπουργικὸν Συμβούλιον.

Ἡ παροῦσα καταγγελία ὑποβάλλεται ὑμῖν κατόπιν ἐντολῆς τοῦ Δικηγορικοῦ Σώματος Λεμεσοῦ ἐν Γενικῇ Συνελεύσει λαβούσῃ χώραν τὴν 24ην Μαΐου 1975 καὶ τῆς δυνάμει τῆς ἐν αὐτῇ ληφθείσης ἀποφάσεως γενομένης εἰς ἐμὲ ἐγγράφου καταγγελίας ἀριθμοῦ δικηγόρων μελῶν τοῦ Δικηγορικοῦ Συλλόγου Λεμεσοῦ."

("In my capacity as Chairman f the Limassol Bar Committee and by virtue of the powers with which I am vested on the basis of paragraph (c) of subsection (2) of section 17 of the Advocates Law, Cap. 2 (as amended), I hereby report my colleague Andreas Neocleous, of Limassol, as guilty of disgraceful of unprofessional conduct and/or conduct which is contrary to the Advocates Rules of etiquette and in particular rules 2, 3 and 4, and/or any such other Rules, because he had accepted appointment and served as a Minister in the "illegal Council of Ministers" formed by the coup d'etat under Mr. Nicolaos Sampson.

The present report is submitted to you on the instructions of the Limassol Bar Association at a General Meeting which took place on the 24th May, 1975, and on the basis of a decision taken during it upon a written report made to me by a number of advocates members of the Limassol Bar Association").

Section 17(2)(c) of the Law referred to in the above letter is in these terms:

"17(2) Proceedings to enforce any of the penalties provided by subsection (1) may be commenced—

(a) .....

(b) .....

(c) on a report made to the Disciplinary Board by any Court or a Chairman of a Local Bar Committee".

As against the aforesaid decision of the Disciplinary Board the present Charman of the local Bar Committee of Limassol filed on the 4th day of February, 1980, the present appeal.

By notice dated 26th April, 1980, counsel for the respondent raised four legal points and on the 30th April, 1980, the date of hearing of this appeal, upon their application, the first point i.e. "that there is not in law an appeal before the Supreme Court", was heard as a preliminary legal issue.

As to who may appeal, counsel for the respondent submitted, is provided by section 17(4) of the Law, as amended by Law 40 of 1975, and the Chairman of a local Bar Committee does not fall within the provisions of that section as he cannot be considered as a complainant.

This section reads as follows:

"17(4). 'Ο Γενικὸς Εἰσαγγελεὺς τῆς Δημοκρατίας, ὁ καταδικασθεὶς ἢ ὁ παραπονούμενος δύναται ἐντὸς δύο μηνῶν ἀπὸ τῆς ἐκδόσεως τῆς ἀποφάσεως ὑπὸ τοῦ Πειθαρχικοῦ Συμβουλίου νὰ ἐφεσιβάλῃ ταύτην, συμφώνως πρὸς τὴν ἐπὶ τούτῳ ὑπὸ ἐκδιδομένου διαδικαστικοῦ κανονισμοῦ ὑπὸ τοῦ 'Ανωτάτου Δικαστηρίου προβλεπομένην διαδικασίαν, εἰς τὸ 'Ανώτατον Δικαστήριον τὸ ὁποῖον συμφώνως πρὸς τὸν ρηθέντα διαδικαστικὸν κανονισμὸν προβαίνει εἰς ἀκρόασιν τῆς ἐφέσεως καὶ κέκτηται ἐξουσίαν ὅπως εἴτε ἐπικυρώσῃ τὴν ἀπόφασιν τοῦ Πειθαρχικοῦ Συμβουλίου εἴτε ἀκυρώσῃ ἢ τροποποιήσῃ ταύτην ἢ ἐκδώσῃ ἕτερον διάταγμα ὡς ἤθελε θεωρήσει πρέπον".

("The Attorney-General of the Republic, the convicted advocate or the complainant may within two months of the delivery of the decision by the Disciplinary Board, appeal to the Supreme Court, in accordance with the procedure prescribed by Rules issued by the Supreme Court in this respect, which, in accordance with the aforesaid Rules proceeds to the hearing of the appeal and is vested with the power to either confirm the decision of the Disciplinary Board or set aside or modify it or issue such other order as it may deem fit").

The second leg of the argument of counsel for the respondent is that this appeal cannot be dealt with since no Rules prescribing the procedure as to the hearing of appeals have been made by the Supreme Court as provided by section 17(4) of the Law.

Both the above submissions of counsel for the respondent were supported by the Chairman of the Bar Council who addressed this Court as amicus curiae.

Now, the first question posed is whether the Chairman of the Local Bar Committee of Limassol on the facts of this case can be considered as a complainant within the meaning of section 17(4) of the Law.

The word "complainant" (paraponoumenos) in the context of the said section of the Law should be given the same meaning as in criminal proceedings. This is clear from subsection 7 which provides that the Disciplinary Board in carrying out an enquiry under this section shall have the same powers and shall conduct the enquiry as nearly as may be as a Court of summary jurisdiction.

In Jowitt's Dictionary of English Law, 2nd edition, volume 1, page 403 a complainant is defined as the person aggrieved and is the victim of the offence. The person aggrieved or the victim of the offence may be the same person who reports the case to the authorities, but there are instances where the person who reports the case and the person aggrieved are two different persons.

To my mind the Chairman of the Local Bar Committee of Limassol, taking into consideration the facts of this case, cannot be considered as the complainant. Consequently, he has no right of appeal.

In view of the fact that this is the majority decision of the Court on this point, I consider it unnecessary to pronounce on the second submission of counsel for the respondent.

This appeal, therefore, should be dismissed.

SAVVIDES J.: I had the opportunity of reading in advance the judgment of my brother Judge L. Loizou and I agree with the result he reached and which I fully adopt.

I find it unnecessary to repeat the facts and the exposition of the Law, in view of the fact that they have just been expounded in the judgment of L. Loizou J. and with which I agree.

A number of preliminary legal objections were raised by counsel for the respondent at the hearing of the appeal amongst which the question as to whether a Chairman of a local Bar Committee is entitled to appeal against the decision of the Advocates Disciplinary Board under s. 17(4) of the Advocates Law (Cap. 2) as amended by s. 8(4) of Law 40 of 1975.

I share the opinion that the Chairman of a Local Bar Committee, in the present case the Chairman of the Limassol Bar Committee, cannot be considered as "a complainant" under s.8(4) of Law 40 of 1975 and in consequence cannot appeal against the decision of the Advocates Disciplinary Board, established under the provisions of s.16 of Cap. 2. For this reason I find that the preliminary objection based on this ground by counsel for the respondent succeeds and the appeal has to be and is hereby dismissed.

Having so decided, I find it unnecessary to pronounce on the other preliminary objections raised by counsel for respondent.

TRIANTAFYLLIDES P.: This is an appeal lodged by the Chairman of the Local Bar Committee of Limassol against the decision of the Advocates Disciplinary Board, dated January 9, 1980, by means of which advocate A. Neocleous, of Limassol, was acquitted of the disciplinary offence of disgraceful or unprofessional conduct. He had been charged with such conduct because he has served as a "Minister" under Nicolaos Sampson in the "Council of Ministers" which was formed during the abortive coup d'etat of July 1974.

The case was brought before the Disciplinary Board by means of a report of the at the time Chairman of the Local Bar Committee of Limassol, under section 17(2)(c) of the Advocates Law, Cap. 2, as amended by the Advocates (Amendment) Law, 1961 (Law 42/61), the Advocates (Amendment) Law, 1963 (Law 20/63), the Advocates (Amendment) Law, 1970 (Law 46/70), and the Advocates (Amendment) Law, 1975 (Law 40/75).

Subsection (2) of section 17 of Cap. 2, reads as follows:-

"(2) Proceedings to enforce any of the penalties provided by subsection (1) may be commenced—

(a) by the Disciplinary Board of its own motion;

(b) by the Attorney-General;

(c) on a report made to the Disciplinary Board by any Court or a Chairman of a Local Bar Committee;

(d) by an application, with the leave of the Disciplinary

Board, of any person aggrieved by the conduct of the advocate".

Under subsection (4) of section 17 of Cap. 2, which was introduced by section 8 of Law 40/75, an appeal against a decision of the Disciplinary Board may be made to the Supreme Court by the Attorney-General of the Republic, the convicted advocate or the complainant ("παραπονούμενος").

At the commencement of the hearing of the present appeal Mr. L. Papaphilippou, who is appearing for the respondent advocate, raised an objection that the Chairman of the Local Bar Committee of Limassol was not entitled to file the appeal under section 17(4) of Cap. 2, inasmuch as he was not a "complainant"; it was argued, in support of the said objection, that a "complainant", in the sense of section 17(4), is only a "person aggrieved" in the sense of section 17(2)(d) of Cap. 2, and so a "Court" or a "Chairman of a Local Bar Committee" making a report, as in this case, under section 17(2)(c), can never be regarded as a "complainant" in the sense of section 17(4).

Mr. L. Clerides, who is a member of the Disciplinary Board and has taken part in these proceedings as an amicus curiae, has agreed, in this respect, with counsel for the respondent advocate.

After hearing, also, Mr. P. Pavlou, who is appearing for the appellant Chairman of the Local Bar Committee of Limassol, I find myself unable to agree with my learned brother Judges that the preliminary objection should be sustained:

In my view the term "complainant" ("παραπονούμενος"), in section 17(4) of Cap. 2, is wide enough to include in a proper case, such as the present one, a Chairman of a Local Bar Committee who makes a report to the Disciplinary Board under section 17(2)(c), and should not be restricted only to a person aggrieved who applies to the Board under section 17(2)(d).

It is useful, in this respect, to look at the legislative history of section 17 of Cap. 2:

It was initially section 13 of the Advocates Law, 1955 (Law 38/55), which is now Cap. 2. Section 17(2) is the same in

Cap. 2 as section 13(2) in Law 38/55, but subsection (5) of section 17 of Cap. 2– (which was, originally, section 13(5) of Law 38/55, and, eventually, section 17(5) of Cap. 2)– read as follows prior to being replaced, by means of Law 40/75, by the now in force subsection (4) of section 17:–

"(5) The Supreme Court may, of its own motion or on the application of the complainant or of the advocate whose conduct is the subject of the enquiry, review the whole case and either confirm the decision of the Disciplinary Board or set it aside or make such other order as it may deem fit".

Prior to the enactment of section 13 of Law 38/55 there existed a similar provision, namely section 11 of the Advocates Law, 1933 (Law 20/33), as amended by the Advocates (Amendment) Law, 1949 (Law 2/49), which became section 10 of the Advocates Law, Cap. 3, in the 1949 Revised Edition of the Statute Laws of Cyprus.

Under the said section 10 there was no provision for the setting up of an Advocates Disciplinary Board, and its functions were performed by the Supreme Court; consequently, there was not to be found in the said section 10 any provision for an appeal to the Supreme Court by a complainant, such as the old subsection (5) of section 17 of Cap. 2 and the present subsection (4) of the said section 17.

Subsection (2) of section 10 of the aforementioned Cap. 3, which corresponds to subsection (2) of section 17 of the presently in force Cap. 2, read as follows:–

"(2) Proceedings to enforce any of the penalties provided by sub-section (1) may be commenced by the Supreme Court of its own motion or by an application to a Judge of the Supreme Court in Chambers for a rule to issue to the advocate calling upon him to show cause why he should not be dealt with under the provisions of the said sub-section.

An application under this sub-section may be made by the Attorney-General or, with the leave of the Supreme Court, by any person aggrieved by the conduct of the advocate".

It is to be observed that in subsection (2) of section 10 of Cap. 3, above, there was no specific reference to a "Court", or to a "Chairman of a Local Bar Committee", and, as it could not be that they were not entitled to bring a complaint against an advocate before the Supreme Court which acted at the time as a disciplinary organ, it must be taken that they were included in the general expression "any person aggrieved"; and, of course, once the Chairman of a Local Bar Committee had placed a complaint before the Supreme Court he became, naturally, a complainant.

When subsection (2), above, was reenacted, by means of Law 38/55, as subsection (2) of section 13 of the said Law- (which later became what is now subsection (2) of section 17 of Cap. 2)- special provision was made by means of paragraph (c) thereof so that a Court and a Chairman of a Local Bar Committee were taken out of the general category of persons aggrieved, under paragraph (d) thereof, in order that they could report complained of conduct of an advocate to the Disciplinary Board, which was, at the same time, set up by means of Law 38/55, without needing to obtain, in this respect, the leave of the Disciplinary Board. But, in my view, this special treatment, which was accorded to a Court or a Chairman of a Local Bar Committee, did not deprive them of the attribute of complainants, in the sense that each one of them could still be treated as a complainant in the sense of the then in force subsection (5) in relation to the review of a case by the Supreme Court on appeal.

In my opinion, the replacement of the said subsection (5) by the new subsection (4) of Cap. 17, regarding appeals to the Supreme Court, does not alter the situation at all in this respect, and, therefore, in so far as an appeal to the Supreme Court is concerned, a Court or a Chairman of a Local Bar Committee can, in a proper case, such as the present one, be treated as a complainant.

There are, indeed, instances in which a Chairman of a Local Bar Committee may, by his report, place before the Disciplinary Boad complained of conduct of an advocate which, in any event, affects all the members of his Local Bar Association in a manner rendering them collectively persons aggrieved, as, for example, when the unprofessional conduct of the advocate

concerned is such that it affects the interests of every individual member of the Local Bar Association to which he belongs.

This is, indeed, the position, in the present case, in which the members of the Local Bar Association of Limassol decided at a general meeting that the Chairman of their Local Bar Committee should report the respondent advocate to the Disciplinary Board in relation to his complained of conduct, which rendered him a person who, in their own view, is unfit to practise as an advocate, together with them, as a member of the Local Bar Association of Limassol.

For all the above reasons I have reached the conclusion that the Chairman of the Local Bar Committee of Limassol could file the present appeal as a complainant in the sense of subsection (4) of section 17 of Cap. 2.

There remain to be dealt with two other preliminary issues:

It was submitted by Mr. L. Clerides, who appeared in the present proceedings as a member of the Disciplinary Board and as an amicus curiae, that, in any event, there does not exist a right of appeal against an acquittal by the Disciplinary Board. He has based his contention on the provisions of subsection (7) of section 17, which reads as follows:-

> "(7) The Disciplinary Board in carrying out an enquiry under this section shall have the same powers and shall conduct the enquiry as nearly as may be as a Court of summary jurisdiction".

He has submitted that in view of the reference to a "Court of summary jurisdiction" in subsection (7), above, an appeal against an acquittal by the Disciplinary Board can only be made by the Attorney-General, or with his sanction, in the instances envisaged under section 137 of the Criminal Procedure Law, Cap. 155.

In my view the reference to a "Court of summary jurisdiction", in subsection (7) of section 17 of Cap. 2, is only intended to regulate the procedure before the Disciplinary Board, and it cannot be treated as limiting the right of appeal under subsection (4) of section 17 of Cap. 2; if that was so then it would render practically meaningless the reference to the "complainant" in the said subsection (4).

Mr. L. Papaphilippou argued, too, on behalf of the respondent advocate that, in any event, no appeal could be made by the Chairman of the Local Bar Committee of Limassol, in the present case, under the aforesaid subsection (4), because it is provided therein that an appeal under it is to be made in accordance with the procedure laid down by Rules of Court to be made by the Supreme Court, and no such Rules of Court have as yet been made. In my opinion it would not be proper to construe the aforementioned subsection (4) as a provision by means of which it was legislated that the substantive right of appeal, which the Legislature granted under it, was made conditional, as regards its enjoyment, on when or whether the Supreme Court did or did not make Rules of Court pursuant to such subsection.

The fact that no Rules of Court have as yet been made under subsection (4) of section 17 does not deprive of his substantive right of appeal any person entitled to appeal thereunder; and until such Rules are made the established practice as regards appeals has to be followed in making an appeal under the said subsection (4).

For all the foregoing reasons I have reached the conclusion that the preliminary objections raised by counsel for the respondent advocate and by counsel who are members of the Disciplinary Board cannot be sustained, and this appeal should proceed to be heard on its merits.

DEMETRIADES J.: I am in full agreement with the judgment just delivered by the President of the Court.

TRIANTAFYLLIDES P.: In the result, this appeal is dismissed by majority, with no order as to its costs.

Appeal dismissed. No order as to costs.