CASES

DECIDED BY

THE SUPREME COURT OF CYPRUS

ON APPEAL

AND

IN ITS ORIGINAL JURISDICTION

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[TRIANTAFYLLIDES, P., HADJIANASTASSIOU, A. LOIZOU, MALACHTOS, LORIS, STYLIANIDES, PIKIS, JJ.]

IN THE MATTER OF ARTICLE 83 OF THE CONSTITUTION

AND

IN THE MATTER OF AN APPLICATION BY THE ATTORNEY-GENERAL OF THE REPUBLIC FOR LEAVE TO PROSECUTE GEORGHIOS AFXENTIOU GEORGHIOU, A MEMBER OF THE HOUSE OF REPRESENTATIVES.

(*Application No.* 1/82).

House of Representatives—Member of—Leave to prosecute—Article 83.2 *of the Constitution—Principles applicable.*

Deputy Attorney-General of the Republic—Appointment to post of—Justified on the basis of the "law of necessity"—Not open in a proceeding for leave to prosecute a member of the House of Representatives to examine validity of the appointment to the above post of its present holder.

Practice—Application for leave to prosecute member of the House of Representatives—Made by Attorney-General of the Republic and signed by the Deputy Attorney-General of the Republic on

his behalf – Properly filed and duly pending before the Supreme Court— Whether oral evidence can be adduced during the hearing of such application—Article 83.2 of the Constitution

By means of the above application which has been made by the Attorney-General of the Republic but was signed and argued on his behalf by the Deputy Attorney-General of the Republic there was sought the leave of the Supreme Court under Article 83.2* of the Constitution, to prosecute Georghios A. Georghiou, a member of the House of Representatives. The offences in respect of which leave was sought were those of forgery and uttering a forged document and were allegedly committed by the respondent in his professional capacity as an advocate.

At the commencement of the hearing of the application Counsel for the respondent raised a preliminary objection that the application was not validly presented because (a) It has not originated and has not been made by a competent authority i.e. the Attorney-General but by the Deputy Attorney-General whose appointment to this post was invalid as having been made in contravention of Articles 112, 113 and 114 of the Constitution.

At the conclusion of his address the Deputy Attorney-General applied for leave to call the investigating officer in this case in order to give evidence orally in rebuttal of the allegation, in the affidavit of the respondent dated 23.12.82, that the police investigation against him was politically motivated; and for leave to cross-examine the respondent regarding his said allegation.

Held, (1) *on the preliminary objection Hadjianastassiou and Pikis, JJ. dissenting:*

(1) That as the appointment by the President of the Republic of Mr. L. Loucaides to the post of Deputy Attorney-General of the Republic appears, on the face of the relevant publication in the Official Gazette, to have been made in the exercise of the powers vested in the President of the Republic by virtue of Article 112.1 of the Constitution, and, also, as the said appointment has been made in circumstances, which justify the making

* Article 83 of the Constitution is quoted at pp. 16–17 post.

of such appointment on the basis of the "law of necessity" (as expounded in, inter alia, the cases of *The Attorney-General of the Republic v. Ibrahim*, 1964 C.L.R. 195, *Ioannides v. The Police* (1973) 2 C.L.R. 125 and *Theodorides v. Ploussiou* (1976) 3 C.L.R. 319), it is not open to this Court in a proceeding such as the present one to examine, incidentally and in an ancillary manner, the validity or expediency of the appointment of Mr. L. Loucaides to the post of Deputy Attorney-General of the Republic (*Attorney-General of the Republic v. Sampson* (1973) 2 C.L.R. 92 distinguished).

(2) That since the present application appears to have been made by the Attorney-General of the Republic, and was signed by the Deputy Attorney-General of the Republic undoubtedly on his behalf, it has been properly filed and it is, therefore, duly pending before us for determination on its merits.

(II) *On the applications of the Deputy Attorney-General for leave to adduce oral evidence and for leave to cross-examine the respondent:*

Held, that, the above applications must fail.

(III) *On the merits of the application:*

That this is a proper case to grant leave under Article 83.2 of the Constitution to prosecute the respondent as applied for.

Application granted.

Cases referred to:

Xenophontos v. Republic, 2 R.S.C.C. 89;

Republic v. Rodosthenous, 1961 C.L.R. 152;

Attorney-General of the Republic v. Ibrahim, 1964 C.L.R. 195;

HjiLiasi v. Pistola and Another, 4 R.S.C.C. 21;

Great Northern Rly Co. v. Eastern Countries Rly Co. (1851) 9 Hare 306 at p. 311;

Head v. Bush (1865) 13 W.R. 651;

Ellis v. Dubowski [1921] 3 K.B. 621;

Mills v. LCC [1925] 1 K.B. 213;

Allingham v. Minister of Agriculture and Fisheries [1948] 1 All E.R. 780;

Jackson, Stanfield & Sons v. Butterworth [1948] 2 All E.R. 558 at pp. 564-566;

H. Lavender & Sons Ltd. v. Minister of Housing and Local Government [1970] 3 All E.R. 871; [1970] 1 W.L.R. 1231;
Decisions of the Greek Council of State Nos.: 745/32, 367/33, 696/33, 933/35, 2372/52 and 94/54.

Application.

Application by the Attorney-General of the Republic for the leave of the Supreme Court to prosecute Georghios Georghiou, a member of the House of Representatives, on charges of forgery and related crimes.

L. Loucaides, Deputy Attorney-General of the Republic with *A. Papasavvas*, Senior Counsel of the Republic, for the Republic.

M. Christofides with *Chr. Triantafyllides*, for the respondent.

Cur. adv. vult.

13th January, 1983.

The following decisions were read:

TRIANTAFYLLIDES P.: At the commencement of the hearing of this application arguments were heard on the part of counsel for the parties regarding the preliminary objection of counsel for the respondent that there does not exist for determination before this Court a validly presented application under Article 83 of the Constitution.

Paragraph 2 of the said Article 83 provides, inter alia, that "A Representative cannot, without the leave of the High Court," - now of the Supreme Court - "be prosecuted, arrested or imprisoned so long as he continues to be a Representative".

The present application is signed by Mr. L. Loucaides as Deputy Attorney-General of the Republic; and it has been contended by counsel for the respondent that the appointment of Mr. L. Loucaides to the post of Deputy Attorney-General is invalid as having been made in contravention of Articles 112, 113 and 114 of the Constitution.

As it appears from the Official Gazette of the Republic, dated 19th September 1975 (Notification No. 1440), Mr. Loucaides was appointed as from the 10th September 1975, by virtue of Article 112.1 of the Constitution, by the President of the Republic, as Deputy Attorney-General of the Republic (Βοηθὸς Γενικοῦ Εἰσαγγελέως τῆς Δημοκρατίας).

My brother Judges A. Loizou J., Malachtos J., Loris J., Stylianides J. and myself are of the opinion that:

(a) As the appointment by the President of the Republic of Mr. L. Loucaides to the post of Deputy Attorney-General of the Republic appears, on the face of the aforementioned publication in the Official Gazette, to have been made in the exercise of the powers vested in the President of the Republic by virtue of Article 112.1 of the Constitution, and, also, as the said appointment has been made in circumstances, which justify, in our opinion, the making of such appointment on the basis of the "law of necessity" (as expounded in, inter alia, the cases of *The Attorney-General of the Republic v. Ibrahim,* 1964 C.L.R. 195, *Ioannides v. The Police,* (1973) 2 C.L.R. 125 and *Theodorides v. Ploussiou,* (1976) 3 C.L.R. 319), it is not open to this Court in a proceeding such as the present one to examine, incidentally and in an ancillary manner, the validity or expediency of the appointment of Mr. L. Loucaides to the post of Deputy Attorney-General of the Republic.

In our view the present case is clearly distinguishable from the case of the *Attorney-General of the Republic v. Sampson,* (1973) 2 C.L.R. 92, where in an application again under Article 83 of the Constitution, such as the present one, this Court pronounced on the validity of the extension of the services of the Attorney-General by the Council of Ministers, under the provisions of the Pensions Law, Cap. 311, as amended by the Pensions (Amendment) Law, 1967 (Law 9/67), in circumstances not involving at all the application of the "law of necessity".

(b) Since the present application appears to have been made by the Attorney-General of the Republic, and was signed by the Deptuty Attorney-General of the Republic undoubtedly on his behalf, it has been properly filed and it is, therefore, duly pending before us for determination on its merits.

In delivering judgment at the conclusion of the proceedings in the present application any one of us may, if he deems such a course necessary, expand further on the reasons for reaching our above conclusions (a) and (b).

Our brother Judges Hadjianastassiou J. and Pikis J. will give separate decisions.

PIKIS J.: This is an application made in the name of the Attorney-General for the leave of the Supreme Court to prosecute Georghios Georghiou, a member of the House of Representatives, on charges of forgery and related crimes. Leave of the Supreme Court is made an indispensable prerequisite for the prosecution of a Representative, so long as he is a member of the House.

The application is opposed on procedural and substantive grounds. Preliminary to examination of the merits of the application, we set down for adjudication, objections to the validity of the application and received submissions in support and against the objections.

It is the contention of the respondent, outlined in the opposition and expounded before us that, no valid proceeding is pending before us entitling the Supreme Court to take cognizance of the request to lift the immunity of the respondent for reasons that may appropriately be summarised as follows:-

A) The application is ill-founded because it does not originate from and it is not made by a competent authority, i.e. the Attorney-General; therefore, the machinery for sanctioning the prosecution was not validly set in motion. As a matter of fact, the application was made in the name of the Attorney-General but signed by Mr. Loucaides in the capacity of Assistant Attorney-General.

In the course of the hearing of the preliminary issues, Mr. Loucaides filed a written statement of Mr. C. G. Tornaritis, the Attorney-General, dated 27th December, 1982, informing us that he authorised Mr. Loucaides, Assistant to the Attorney-General, to make the present application. The statement is also explicit as to the circumstances leading to the authorisation of the application given after an assurance by two law officers of the Office of the Attorney-General, namely, Mr. L. Loucaides, Assistant to the Attorney-General and Mr. A. Evangelou, Senior Counsel of the Republic, who examined the case, that there is evidence supporting the commission of criminal offences by a member of the House of Representatives for the Larnaca District, namely, Georghios Afxentiou Georghiou.

The statement of the Attorney-General leads inexorably to the inferences that—

(a) The Attorney-General never examined personally the case and that

(b) he authorised the making of the application exclusively by reference to the cogency of the evidence available.

Under the Constitution, it was submitted on behalf of the respondent, the decision to prosecute a member of the House of Representatives vests exclusively in the Attorney-General.

B) Neither the Attorney-General can delegate the exercise of this power nor can his assistant, if validly appointed, has any power under the Constitution to act autonomously in the matter. So, the application pending before us does not originate from the authority competent under the Constitution to move the Supreme Court for the removal of the immunity. Hence, it is ill-founded and ought to be dismissed.

C) The application is unsustainable because it is signed by an officer unknown to the law—the Assistant Attorney-General. The Constitution provides, it was argued by Mr. Christofides, for the post of Assistant to the Attorney-General, a submission born out by the Greek text of the Constitution (see Articles 112 and 114 of the Constitution). Much of the argument in respect of this submission, turns on semantics and I regard it as inconsequential. Associated with this objection, is the one following, turning on the status of Mr. Loucaides and, the validity of his appointment to the post of Assistant to the Attorney-General to which he was appointed by the President of the Republic on 10.9.1975, gazetted on 19.9.1975 under Notification 1440.

D) Mr. Loucaides is not the holder of the post of Assistant Attorney-General or Assistant to the Attorney-General—whatever the correct title of the post may be—for his appointment to the post was made without necessity arising to fill the gap left by the voluntary departure of Turkish officers of the State at the end of 1963. If necessity compelled the filling of the post, in accordance with the principles laid down by the Supreme Court, in the case of *The Attorney-General of the Republic* v. *Mustafa Ibrahim and Others*, 1964 C.L.R. 195, the Judges of the existence of necessity, as well as the arbiters of filling the gap, were the Members of the House of Represent-

atives and nobody else. In the submission of Mr. Christofides, the legal service of the Republic functioned without hindrance adequately, notwithstanding the absence of a deputy to the Attorney-General, a fact suggestive in itself of the absence of any compelling need to fill the post.

Mr. Loucaides argued the case personally, notwithstanding the assault on his status for, he explained, he was relieved of embarrassment for the views he conveyed on the subject of the legality of his appointment, were those of the Attorney-General, expressed in Recourse No. 197/75, where the validity of the appointment of Mr. Loucaides was challenged. In a written statement to the Court in the aforementioned recourse, Mr. Tornaritis supported the view that the appointment of Mr. Loucaides was made necessary, on account of the continuous absence from his duties of Mr. Feridoun, since 1963, in the interests of the proper functioning of the legal service of the Republic. Recourse No. 197/75 was not pursued to conclusion. It was withdrawn, so, there is no decision of the Supreme Court to guide us on the validity of the submission of the respondent in relation to the appointment of Mr. Loucaides.

Mr. Loucaides countered the argument that he acted without authority, by producing the written statement of Mr. Tornaritis of 27th December, 1982 and, argued that omission or failure to signify the fact that the application was raised on behalf of the Attorney-General, did not detract from its validity. Both counsel were ad idem in submitting that it is open to the Supreme Court in these proceedings to pronounce on the validity of the appointment of Mr. Loucaides, notwithstanding the fact that the issue only arises in an indirect way. They both submitted that it is open to the Court to examine the validity of this appointment in order to determine whether Mr. Loucaides is usurping the position he presently holds.

In my judgment, the issues arising for decision are, in order of logical priorities, the following:-

(1) Is a proper application pending before the Supreme Court for the lifting or removal of the immunity of the respondent from prosecution?

Answering this question, requires a decision on the

authority competent under the Constitution to set in motion the machinery for the removal of the immunity and the prerequisites to it. If the answer is in the negative and, we hold that the application before us is ill-founded, that should be the end of the matter. Otherwise, we shall have to examine a second question,

(2) the validity of the appointment of Mr. Loucaides and, if valid, the status of the office and the powers vested in him in virtue of his post, provided always it is competent for the Court to take cognizance of the issue in these proceedings.

I consider inconsequential arguments raised as to the proper title of the post held by Mr. Loucaides. Arguments turning on this point, can have no bearing on the outcome of this application. Whatever may be the merits of rival submissions advanced, as to whether the title to the post is "Assistant to the Attorney-General" or "Assistant Attorney-General", no question of application of Article 149 can possibly arise. Article 149 of the Constitution empowers the Supreme Court to determine conflicts between the two official texts of the Constitution —the Greek and Turkish—and resolve, by a process of interpretation, ambiguities arising. Article 149 cannot be invoked unless there is a substantive conflict or a real ambiguity on a substantive matter, such as the powers vested by the Constitution in the deputy of the Attorney-General. It can have no application to a case where there is arguably a variation between the two texts, a shade of variation, with regard to the title of a given post or office. In such a case, the correct approach should be to use the title envisaged by the Greek text, when the title of the post is given in Greek and, the title envisaged by the Turkish text, when it is used in that language.

One should concern himself no further with this aspect of the case.

Validity of the Application for the Leave of the Supreme Court to prosecute Representative Georghios A. Georghiou:

Article 83.1 of the Constitution confers absolute immunity on members of the House of Representatives in respect of "any statement made or vote given by them in the House of Representatives".

Article 83.2 confers upon Representatives immunity from prosecution while they continue to serve qualified, in that it may be lifted on the application of a competent authority by the Supreme Court.

Parliamentary immunity originated from the Constitution that followed the French Revolution as a necessary safeguard for the unobstructed exercise of parliamentary authority and powers. (See, *Traditions of Constitutional Law*, by *Athanasios G. Raikos*, 1976, p. 193 et seq. and, *Hansard of Greek Parliament*, recording a discussion on the subject, on a meeting held on 16.12.1960). In accordance with constitutional traditions, the immunity is regarded as essential for maintaining the proper composition of the House and the exercise of parliamentary control. Therefore, the immunity vests, in the first place, in the House and, indirectly therethrough, to the Representative. (See *Raikos*, supra—*Kyriacopoulos on Greek Constitutional Law*, *4th ed.*, *p.* 289 *et seq.* and, *the speech of Greek Parliamentarian Elias Eliou, before the Greek Parliament, on* 16.12.1960).

In most countries, including Greece, removal of immunity is at the discretion of Parliament itself. The dangers from the possibility of politicisation of such issues were eloquently pointed out by Parliamentarian Eliou, in a meeting of the Greek House aforementioned, as well as the need to keep at all times issues, relevant to immunity, separate and distinct from party politics and political considerations. For this purpose, the Greek Constitution provides for a secret vote (see *Articles* 61–63 of the 1975 *Greek Constitution*), whereas the House itself, adopted a detailed code for preliminary examination of applications for the lifting of the immunity of a Parliamentarian by the Justice Committee who report thereafter to the House (see *Regulation* 17 of the *Greek Parliament*).

The Cyprus Constitution entrusted the immunity and its removal to the judicial authorities, no doubt in order to safeguard it in the best possible way and, avoid every possibility of abuse. The Attorney-General is empowered to set in motion, in a proper case, the machinery for the removal of the immunity and the Supreme Court is vested with power to authorise its removal.

The Constitution does not name expressly the authority

competent to set in motion this machinery but indicates indirectly, by the provisions of Article 113.2, that the authority competent to initiate proceedings is the Attorney-General. The Attorney-General is empowered, under Article 113.2, to initiate "any proceedings for an offence against any person in the Republic". The powers conferred by Article 113.2 vest exclusively in the Attorney-General. No one other than the Attorney-General can assume the powers vested by Article 113.2. His deputy can only assume these powers in his absence or during his temporary incapacitation. It is common ground that the Attorney-General is the authority competent to initiate proceedings for the leave of the Supreme Court to lift the immunity of a Representative. Both, Mr. Loucaides and Mr. Christofides, subscribed to this view. The post of the Attorney-General under the Cyprus Constitution is unique and, in many respects his duties are of a quasi judicial nature. He serves under the same terms and conditions as Judges of the Supreme Court and must have the same qualifications (see Article 112.4 of the Constitution). He has security of tenure under the Constitution, as Judges of the Supreme Court and his position is independent from the executive or any department of State. In exercising his powers to institute a prosecution, as well as in any other matter pertaining to his duties, public interest is the only consideration that should guide him in the discharge of his duties. The quasi judicial nature of his functions was recognised by the Supreme Constitutional Court, as an indisputable fact, in *Charilaos Xenophontos* v. *The Republic (Minister of Interior)*, 2 R.S.C.C. 89. In another case, the Supreme Constitutional Court laid stress on the provisions of Article 113.2, that his duties thereunder are exclusively exercisable in the public interest, of which the Attorney-General is, in the first place, the sole judge– *Annetta N. HjiLiasi* v. *Alecos Pistola and Another*, 4 R.S.C.C. 21.

Discretionary powers, vested by statute and afortiori by the Constitution, cannot be delegated. The rule is one of considerable antiquity, signified by the Latin terminology that adorns it, delegatus non potest delegare. The rule is strictly applied in the interests of legality and proper constitutional order. (See, *Halsbury's Laws of England*, 4th ed., *Vol.* 1, *para.* 32 *and*, *Great Northern Rly Co.* v. *Eastern Counties Rly Co.* (1851) 9 Hare 306 at 311; *Head* v. *Bush* (1865) 13 WR 651;

Ellis v. *Dubowski* [1921] 3 K.B. 621, D.C.; *Mills* v. *LCC* [1925] 1 K.B. 213, D.C.; *Allingham* v. *Minister of Agriculture and Fisheries* [1948] 1 All E.R. 780, D.C.; *Jackson, Stansfield & Sons* v. *Butterworth* [1948] 2 All E.R. 558 at 564–566, C.A.; *H. Lavender & Son Ltd.* v. *Minister of Housing and Local Government* [1970] 3 All E.R. 871, [1970] 1 W.L.R. 1231). Any attempt by an organ entrusted by law with discretionary powers to delegate them either to a subordinate or for that matter to a superior, is illegal, as well as any consequential exercise of the power by a person other than that entrusted by law. (See, *Conclusions from Case-law of Greek Council of State*, 1929–59, p. 106, in particular see *Decisions* 745/32, 367/33, 696/33, 933/35, 2372/52 and 94/54).

The Court has inherent jurisdiction to examine and determine whether statutory powers have been validly exercised and whether they have been exceeded. (See, *Halsbury's Laws of England, 4th ed., Vol. 1, para.* 22). Consequently, even if the preliminary objections going to the validity of the application, outlined at the outset of the judgment, were not taken, it would still be open to the Court to examine the validity of the powers exercised under Article 113.2 of the Constitution.

The pertinent question is, whether the present application originated from the authority entrusted by the Constitution to move the machinery for the lifting of the immunity as a a result of a proper exercise of the powers vested thereunder.

The application is, on the face of it, inconclusive as to its origin. It is made in the name of the Attorney-General but signed by Mr. Loucaides under the capacity of Assistant Attorney-General. It is clear from the provisions of Article 113.2 that no one can act autonomously thereunder, except for the Attorney-General himself.

To resolve doubts as to the origin of the application, Mr. Loucaides considered it necessary to produce the statement of the Attorney-General of 27th December, 1982, to which reference has already been made. Does this statement validate the proceedings? In my judgment the answer is in the negative for the reasons following:

The statement of the Attorney-General of 27.12.1982 dis-

closes that the Attorney-General never studied the matter under consideration personally and, rested his decision, as he states, on the assurances of two officers of his Department, Mr. Loucaides and Mr. Evangelou. More significantly still, neither the Attorney-General nor his delegates in the matter have applied their mind to whether it is in the public interest to apply for leave to lift the immunity of the Representative in question. Such a decision, would entail examination, not only of the nature of the offence and the evidence in the hands of the police tending to support it, but also to other considerations equally important, bearing on the safeguard of parliamentary immunity, in the light of what was explained earlier in the judgment. In Greece, the case against a Parliamentarian and its implications on the privileges of the House, is scrutinized, minutely one may say, by the Justice Committee of the House, before reporting to the House for a consideration of the issue.

In this case, the only affirmation we have—that it is in the public interest to lift the immunity of the Representative—comes from paragraph 7 of the affidavit of Mr. Yiannis Adradjiotis, a police officer, accompanying and supporting the application.

In fact, it is explicitly stated, on the face of the application, that the motion for the leave of the Supreme Court to lift the immunity of the Representative, is founded on the facts set out in the aforementioned affidavit of Mr. Adradjiotis. There is no statement before us, from the Attorney-General, that it is in the public interest to lift the immunity of Mr. Georghiou, an indispensable prerequisite for the valid initiation of proceedings for leave to lift the immunity of a Representative. To act on the assertion of anyone other than the Attorney-General, that it is in the public interest to lift the immunity, would constitute a serious deviation from the Constitution and, undermine the effectiveness of the immunity and the purposes for which it was granted, outlined earlier in this judgment.

In my judgment, a personal decision by the Attorney-General, that it is in the public interest to lift the immunity of a Representative, is an indispensable prerequisite for the valid initiation of proceedings for the leave of the Supreme Court. Without it, the premises of the application collapse and, in my judgment, no valid application is pending before us.

This being my judgment, it becomes unnecessary to go into any other issue or decide about the validity of the appointment of Mr. Loucaides. I entertain serious reservations whether it is at all possible to resolve the issue incidentally in the context of the present proceedings.

HADJIANASTASSIOU, J.: The application for the leave of the Supreme Court to withdraw the immunity of Georghios A. Georghiou, a member of the House of Representatives, was in the first place raised by a person other than the Attorney-General of the Republic the only person competent under the Constitution to move the Supreme Court for the purpose. The written statement of the Attorney-General of 27th December, 1982, confirms that he never personally applied his mind to the matter under consideration and never decided that it is in the public interest that proceedings should be taken for the lifting of the immunity. Indeed this is not a matter of formality but one of substance going to the root of the proceedings. Consequently I agree with Pikis J. that no valid application is pending before the Court and associate myself with what is stated in his judgment. I am of the opinion that nothing further may be usefully added.

14th January, 1983.

The following rulings were given.

TRIANTAFYLLIDES P. At the conclusion of his address the Deputy Attorney-General of the Republic, Mr. Loucaides, applied for leave to call the investigating officer in this case, Yiannis Adradjiotis, in order to give evidence orally in rebuttal of the allegation, in the affidavit of the respondent dated 23rd December 1982, that the police investigation against the respondent was politically motivated.

Mr. Loucaides applied, also, for leave to cross-examine the respondent regarding his said allegation.

Mr. Christophides, on behalf of the respondent, objected to both applications of Mr. Loucaides.

At this stage of these proceedings and in view of their nature, as well as in the light of all the material already before us, we are, as at present advised, not inclined to grant the aforesaid applications of Mr. Loucaides.

PIKIS, J. The decision of the Supreme Court, I refer to the majority decision of the 13th January, 1983 on the validity of the application, establishes, as I understand it, that a valid application is pending before the Supreme Court for leave to remove the immunity of the respondent.

The majority decision entails that the authority competent under the Constitution i.e. the Attorney-General acting in a quasi-judicial capacity has scrutinized every aspect of the case, including motivations for the prosecution, and concluded that the contemplated prosecution and the application for leave to prosecute is not fraught with any ulterior motive and ought to proceed in the public interest. It is upon this premise that the case must proceed in view of the majority decision despite the judgment of the minority to the effect that the application is invalid.

In view of the above it is for the Supreme Court to decide whether immunity should be lifted on a consideration of the nature of the offence and cognate matters and whether the offence or offences were committed directly or indirectly in connection with the duties of the respondent as a member of the House of Representatives. In the light of the majority decision we are bound to presume and hold that the matters in respect of which an application is pending for oral evidence i.e., oral evidence from the investigating officer Mr. Adradjiotis and the cross-examination of the respondent, have been examined by the Attorney-General acting in a quasi-judicial capacity leading to a decision that the application for leave is not attended by any ulterior motives or arbitrariness.

Consequently I agree with my brethren that the application must be dismissed.

Applications dismissed.

23rd February, 1983.

The following judgments were read.

TRIANTAFYLLIDES P. By means of the present application, which has been made by the Attorney-General of the Republic, but was signed and argued on his behalf by the Deputy Attorney -General of the Republic Mr. L. Loucaides, there is being sought the leave of this Court, under Article 83.2 of the Constitution, to prosecute Georghios A. Georghiou, who is a Member of

the House of Representatives for the Larnaca constituency and who belongs to the Democratic Rally party.

Article 83 of the Constitution reads as follows:

"ΑΡΘΡΟΝ 83

1. Οἱ βουλευταὶ δὲν ὑπόκεινται εἰς ποινικὴν δίωξιν καὶ δὲν εὐθύνονται, ἀστικῶς ἕνεκεν οἱασδήποτε ἐκφρασθείσης γνώμης ἢ ψήφου δοθείσης ὑπ' αὐτῶν ἐν τῇ Βουλῇ τῶν 'Αντιπροσώπων.

2. 'Ο βουλευτὴς δὲν δύναται ἄνευ ἀδείας τοῦ 'Ανωτάτου Δικαστηρίου νὰ διωχθῇ, συλληφθῇ ἢ φυλακισθῇ ἐφ' ὅσον χρόνον ἐξακολουθεῖ νὰ εἶναι βουλευτὴς.

Τοιαύτη ἄδεια δὲν ἀπαιτεῖται ἐπὶ ἀδικήματος ἐπισύροντος ποινὴν θανάτου ἢ φυλακίσεως πέντε ἐτῶν καὶ ἄνω, ἐφ' ὅσον ὁ ἀδικοπραγήσας κατελήφθη ἐπ' αὐτοφώρῳ. Εἰς τὴν περίπτωσιν ταύτην τὸ 'Ανώτατον Δικαστήριον εἰδοποιούμενον παρευθὺς ὑπὸ τῆς ἁρμοδίας ἀρχῆς ἀποφασίζει ἐπὶ τῆς παροχῆς ἢ μὴ τῆς ἀδείας συνεχίσεως τῆς διώξεως ἢ τῆς κρατήσεως, ἐφ' ὅσον χρόνον ὁ ἀδικοπραγήσας ἐξακολουθεῖ νὰ εἶναι βουλευτής.

3. 'Εὰν τὸ 'Ανώτατον Δικαστήριον ἀρνηθῇ νὰ παράσχῃ τὴν ἄδειαν πρὸς δίωξιν τοῦ βουλευτοῦ, ὁ χρόνος καθ' ὃν ὁ βουλευτὴς δὲν δύναται νὰ διωχθῇ δὲν συνυπολογίζεται εἰς τὸν χρόνον παραγραφῆς τοῦ περὶ οὗ πρόκειται ἀδικήματος.

4. 'Εὰν τὸ 'Ανώτατον Δικαστήριον ἀρνηθῇ νὰ παράσχῃ τὴν ἄδειαν πρὸς ἐκτέλεσιν ἀποφάσεως φυλακίσεως ἐπιβληθείσης εἰς βουλευτὴν ὑπὸ ἁρμοδίου δικαστηρίου, ἡ ἐκτέλεσις τῆς ἀποφάσεως ταύτης ἀναβάλλεται, μέχρις οὗ ὁ καταδικασθεὶς παύσῃ νὰ εἶναι βουλευτής".

("ARTICLE 83

Representatives shall not be liable to civil or criminal proceedings in respect of any statement made or vote given by them in the House of Representatives.

2. A Representative cannot, without the leave of the High Court, be prosecuted, arrested or imprisoned so long as he continues to be a Representative. Such leave is not required in the case of an offence punishable with

death or imprisonment for five years or more in case the offender is taken in the act. In such a case the High Court being notified forthwith by the competent authority decides whether it should grant or refuse leave for the continuation of the prosecution or detention so long as he continues to be a Representative.

3. If the High Court refuses to grant leave for the prosecution of a Representative, the period during which the Representative cannot thus be prosecuted shall not be reckoned for the purposes of any period of prescription for the offence in question.

4. If the High Court refuses to grant leave for the enforcement of a sentence of imprisonment imposed on a Representative by a competent court, the enforcement of such sentence shall be postponed until he ceases to be a Representative").

The competence of the High Court of Justice, under the aforesaid Article 83, is being exercised now by our Supreme Court, by virtue of the provisions of sections 9 and 11 of the Administration of Justice (Miscellaneous Provisions) Law, 1964 (Law 33/64).

The present application was filed on 15th December 1982 and an opposition thereto was filed on 23rd December 1982.

The application is supported by an affidavit sworn on 15th December 1982 by Yiannis Adradjiotis, who is the police investigating officer in relation to offences allegedly committed by the respondent, and by an affidavit sworn by Yiannis Kalavanas on 20th December 1982, who is an officer of the Central Bank of the Republic.

The opposition is supported by an affidavit which was sworn by the respondent on 23rd December 1982.

There has, also, been filed, as an appendix to the affidavit of Adradjiotis, the proposed charge containing four counts in which there are set out the offences in respect of which leave is sought from this Court, under Article 83.2, above, of the Constitution, to prosecute the respondent.

Count 1 changes the respondent with the offence of forgery, contrary to sections 331 and 335 of the Criminal Code, Cap. 154; and in the particulars in relation to such count it is stated that the respondent, in August 1982, in Larnaca, with intent to defraud, made a document purporting to be a photocopy of a deposit by him to the Popular Bank Ltd. of an amount of C£3,454 to the benefit of a certain Doris Savva, whereas in fact no such deposit was made and the document in question is false because such document was never issued by, or signed on behalf, of the said Bank.

Count 2 charges the respondent with uttering, contrary to section 339 of Cap. 154, the document to which count 1 refers.

Count 3 charges the respondent with forgery of an official document, contrary to sections 20, 331, 335 and 337 of Cap. 154, and in the particulars in relation to such count it is stated that, between 30th August 1982 and 12th October 1982, in Larnaca, with intent to defraud, the respondent made a document purporting to be a photocopy of a letter of the Central Bank of Cyprus, dated 30th August 1982, addressed to the Popular Bank Ltd. and communicating to it the permission of the Central Bank, in favour of the respondent, to remit abroad, to Birmingham in the United Kingdom, the amount of C£3,705 to Doris Savva, whereas in fact such letter is false because it was never written by, or signed on behalf of, the Central Bank of Cyprus.

Count 4 charges the respondent with uttering, contrary to sections 20, 339, 335 and 337 of Cap. 154, the document to which count 3 refers.

The aforementioned two affidavits of Adradjiotis and Kalavanas set out facts on which the particulars stated in relation to the counts in the charge are based.

In his affidavit the respondent denies having committed the offences with which it is intended to charge him, or any other offence at all.

At the commencement, on 28th December 1982, of the hearing of the present application this Court has had to deal with a preliminary issue which was raised by counsel for the respondent

regarding the validity of the filing of the present application by the Deputy Attorney-General; and on 13th January 1983 it was decided, by majority, that such application had been properly filed.

As it appears from a comparative study of other Constitutions the competence to grant leave of the nature sought in the present case is vested normally in the Legislature and not in the Judiciary, as it has been done by means of Article 83.2, above.

The nature of the said competence is described in, inter alia, Sgouritsas on Constitutional Law ("Σγουρίτσα, Συνταγματικὸν Δίκαιον"), 3rd ed. (1965), vol. A, p. 293 et seq., Raikos, Lectures on Constitutional Law ("Ράϊκος, Παραδόσεις Συνταγματικοῦ Δικαίου"), 5th ed. (1979), vol. A, p. 197 et seq., and Hauriou on Droit Constitutionnel et Institutions Politiques, 5th ed. (1972), p. 876.

Without setting out exhaustively the criteria to be applied in determining the fate of an application under Article 83.2 of the Constitution, it might be said that it is obvious from the wording of such provision that an application of this nature is not to be automatically granted in all instances; and, in deciding whether to grant it or refuse it, there must be taken into account the object of the relevant competence as well as the nature of the immunity from prosecution of a Member of the House of Representatives, the requirements of public interest in each particular case, the nature and seriousness of the offence in respect of which leave is sought to prosecute and the particular circumstances of each individual case. Furthermore, it has to be examined whether the prosecution is politically motivated, as this is a ground on which leave to prosecute may be refused.

On the other hand, I am of the opinion that, in dealing with an application such as the present one, it is not open to this Court to decide if there exists sufficient evidential material establishing the guilt, in respect of the offences concerned, of the Member of the House of Representatives whom it is intended to prosecute.

Consequently, all that this Court can examine in this connection in the present instance is whether, on the basis of the material placed before the Court, the prosecution of the respondent

in the present case is prima facie warranted in law and in fact, in the sense that it is not arbitrary, and not whether his conviction on the strength of such material would be warranted prima facie or at all.

The offences in respect of which it is sought to prosecute the respondent appear to be offences involving dishonesty and moral turpitude, in the sense of Article 64(c) of the Constitution and, so, if the respondent is convicted of such offences then, under Article 71(c) of the Constitution, his seat in the House of Representatives would become vacant.

Since, therefore, it is sought to prosecute the respondent in respect of the commission of offences which, if he is found guilty of them, would entail his losing his seat in the House of Representatives, the proper application of Article 71 of the Constitution would be nullified if we refuse, without good justification, leave to prosecute the respondent now and, thus, defer his prosecution until the expiry of his term of office as a Member of the House of Representatives.

It seems, indeed, to me that this is one of those cases in which, in view of the provisions of Article 71 of the Constitution, it would, if all the other relevant considerations permit such a course, be in the public interest to grant leave to prosecute the respondent, because the granting of such leave would not serve only the general public interest which requires that persons charged with criminal offences should be tried as soon as possible, but, also, the particular public interest involved in not allowing somebody to continue to be a Member of the House of Representatives if he has committed offences which deprive him of the right to continue to be a Member of the House of Representatives.

Of course, in stating the above, I am not at all losing sight of the fact that the respondent is, at this stage, entitled, like any other person, to be presumed innocent until proved guilty according to law.

As has been clearly stated by the Deputy Attorney-General it is not to be alleged by the prosecution that the respondent intended to defraud the Central Bank of Cyprus or the Popular Bank Ltd., but that he only intended to defraud his client,

Doris Savva, and persons acting on her behalf. Thus, the offences in question were, allegedly, committed by the respondent only in the course of his professional relationship as an advocate with his client, Doris Savva, and are not, in any way, directly or indirectly, connected with his functions as a Member of the House of Representatives or with his status as a politician. In the circumstances, it is not possible to hold that the prosecution of the respondent is politically motivated.

The fact that the respondent belongs to a party which is in opposition to the Government and that, as stated by him in his affidavit, he is one of the vociferous spokesmen of such party, do not render politically motivated his prosecution in respect of conduct of his totally unconnected with his political activities.

Having given to this case anxious consideration, and having exercised extreme caution, as this Court should always do in carrying out its task under Article 83.2 of the Constitution, I have, in the light of all the foregoing considerations, reached the conclusion that this is a proper instance in which to grant leave to prosecute the respondent as applied for.

HADJIANASTASSIOU J.: I agree with the judgment of Pikis, J., and share the same reservations about the validity of the proceedings.

A. LOIZOU J.: The elaborate judgments of my brother Judges Triantafyllides, P., and Pikis, J., which I have had the advantage of reading in advance, have made my task easier as their extensive reference to the factual basis of the case and the citation of the constitutional provisions relevant to the determination of the issues arising in these proceedings permit me considerable brevity in giving my reasons for arriving at the conclusion that this is a proper case to grant leave under Article 83.2 of the Constitution to prosecute the respondent as applied for.

The application to that effect has been made by the Attorney-General of the Republic whose office has been introduced into the legal system of Cyprus soon after it came under British rule and was preserved by the Constitution. By it he is an independent officer and his powers and functions are set out in Articles 112 to 114, both inclusive.

In addition to his other duties, the Attorney-General of the Republic has under Article 113.2, "power exercisable at his discretion in the public interest to institute, conduct, take over and continue or discontinue any proceedings for an offence against any person in the Republic".

The qualifications for appointment are the same as those of, and he can be removed only on similar grounds as, a Judge of the Supreme Court.

The acts and decisions of the Attorney-General cannot be the subject of judicial control. Whilst on this point it may also be mentioned that the Police, which is responsible for carrying out criminal investigations, is subject to the instructions of the Attorney-General in view of a specific provision in the Police Law and though the Police comes under the Ministry of the Interior, in so far as its activities relate to prosecution, the Attorney-General is the competent authority to give directions. The safeguards to his office enshrined in the Constitution "are conducive to the exercise of his duties excluding the possibility or interference, or influence on behalf of the Executive. This is a reflection of the paramount importance attached in the independence of the Judiciary" (see Loizou and Pikis, *Criminal Procedure in Cyprus*, p. 4). The reason that the exercise by the Attorney-General of his authority to institute criminal proceedings is not within the ambid of Article 146 of the Constitution, is because they are closely related to judicial proceedings (See *Xenophontos*, 2 R.S.C.C., 89).

Under the established tradition and practice followed by, Attorney-Generals holding office and exercising their duties under the Common Law system, the decision to prosecute which is of paramount importance, has always been taken when the person doing so has satisfied himself that the evidence itself can justify proceedings. In such a case the prosecutor, in this case the Attorney-General, must then consider whether the public interest requires a prosecution. The sufficiency of the evidence is one of the factors that have to be born in mind. They are those who feel that where the evidence is sufficient proceedings ought to follow, but the most preferred view is the one expressed in a House of Commons debate by Lord

Shawcross when he was Attorney-General, and subsequently endorsed by his successors:-

> "It has never been the rule in this country—I hope it never will be—that suspected criminal offences must automatically be the subject of prosecution. Indeed the very first Regulations under which the Director of Public Prosecutions worked provided that he should prosecute 'wherever it appears that the offence or the circumstances of its commission is or are of such a character that a prosecution in respect thereof is required in the public interest'. That is still the dominant consideration".

He continued by saying that regard must be had to "the effect which the prosecution, successful or unsuccessful as the case may be, would have upon public morale and order, and with any other considerations affecting public policy".

Public interest in the sense of Article 113.2 of the Constitution is a wide subject to be exhaustively discussed here. Suffice it to say that among its constituent elements are the nature and gravity of the offence including the penalty provided for and likely to attract.

Once, therefore, such a decision to prosecute exists, the Court has to decide whether it will exercise its discretion under Article 83.2 of the Constitution to grant or refuse leave for the prosecution, arrest, or imprisonment of a representative who continues to be such. I do not intend to attempt a definition of all the possible criteria that should be followed in every conceivable case for the exercise of this Court's discretion in such matters. I shall confine myself to the reasons and the criteria that have influenced my decision in reaching my conclusion in the present case. They are first the nature of the offences which no doubt involve an element of dishonesty and moral turpitude, directly connected with his professional work, and completely outside the sphere of his activities in the House of Representatives.

The second factor is the gravity of the offence, as indicated also by the sentence provided by Law. The intended charges are based on section 335, which carries a term of imprisonment for three years and sections 339 and 337 of the Criminal Code,

which carries a term of imprisonment of ten years in respect of official documents and section 39 for uttering the thing in question.

Finally and this is connected with the nature of the offences, which involve, as already stated, an element of dishonesty and moral turpitude, in the sense of Articles 64(c) and 71(c) of the Constitution, whereby upon the occurrence of a conviction of an offence involving dishonesty or moral turpitude the seat of a representative becomes vacant. This means that if the respondent is found guilty of them that would result in vacating his seat in the House of Representatives.

The effective application, therefore, of Article 71 of the Constitution should not be interfered with by the refusal of this Court to grant leave to prosecute a member of the House of Representatives and so by deferment of such a prosecution until the expiry of one's term of office afford to such representative the opportunity to be and act as a member of the House whereas had he been prosecuted and convicted he would have been disqualified so to act. It is, therefore, improper for this Court when such an eventuality is likely to arise upon a conviction to refuse leave to prosecute, as such a decision would amount to a permission to a person otherwise coming within the ambit of Articles 64(c) and 71(c) of the Constitution to continue in office. No doubt the object of Article 83.2 of the Constitution is not to bring about such a result. By the exercise of the Court's discretion under one article, the application of the provisions of another article should not really be unduly impeded.

For all the above reasons, leave to prosecute the respondent is granted as applied for.

MALACHTOS J.: I had the advantage to read in advance the judgment just delivered by the President of the Court and I must say that I agree with the reasons given and the conclusion reached in this judgment, and I have nothing useful to add.

LORIS J.: I had the advantage and privilege of reading in advance the judgment of the learned President of the Court and I am in full agreement with it. I have nothing useful to add.

STYLIANIDES J.: I had the advantage of reading in advance the judgment of the learned President with which I agree.

The parliamentary immunity safeguarded by Article 83 of the Constitution is not for the advantage of individual members but in order to enable the legislative body unhindered to exercise its functions.

A decision by the applicant that it is in the public interest that leave be given to prosecute a parliamentarian is not a prerequisite to such an application. The sole arbiter on the matter is the Supreme Court. The power and responsibility for the ultimate decision is on this Court, after consideration of the material before it. Leave to prosecute in no way derogates or affects the power of the criminal court. The laws governing criminal proceedings and the trial that follows such leave, which is in no way dissimilar with any other criminal trial, are applied.

I am satisfied that the instant case is not one of political persecution. The application is not politically motivated, notwithstanding any possible repercussions on the political career of the respondent or on his political party—such repercussions, if any, need not concern this Court. I take into consideration the nature of the offences. They are wholly unconnected with respondent's activities as a Member of the legislature. The offences are grave. Indeed, conviction entails unseating the respondent from the House. It is not the object of the constitutional provision of Article 83 to retain in the House of Representatives a person who might not be there had the ordinary course of law been followed.

Leave for prosecution of the respondent is granted as applied for.

PIKIS J.: We are required to take cognizance of an application of the Attorney-General, for the lifting of the immunity of a Member of the House of Representatives—Georghios Afxentiou Georghiou—a Member for the Larnaca district, hereafter referred to as the Representative. Leave is sought to put him on trial on two counts of forgery and two counts of uttering the same two forged documents. One of the two documents allegedly forged, is said to be an official document proclaimed

as a document of the Central Bank of Cyprus, issued under the Exchange Control Law and, the second, a commercial bank deposit receipt.

Before embarking upon an examination of the merits of the application, the Supreme Court set down for determination a preliminary issue affecting the validity of the proceedings. After hearing argument, we deliberated on whether we had been properly moved to examine an application for leave to prosecute the Representative. The Court was divided in its view, on the validity of the proceedings. The majority of the Court—brother Judges Triantafyllides, P., A. Loizou, Malachtos, Loris and Stylianides, JJ.—held the application to be valid as a proper emanation from the authority competent under the Constitution to move the Court to withdraw the immunity of a Representative, i.e. the Attorney-General and, as such, the application was cognizable by the Supreme Court. Brother Judge Hadjianastassiou, and myself, were of a contrary opinion for the reasons indicated in my decision of 13th January, 1983. In our judgment, the application was not a valid emanation from the authority trusted by the Constitution to move the Supreme Court for the removal of the immunity of a Representative. In view of the majority decision, settling the validity of the application, we proceeded in coram to deal with the merits of the application. The coram of the Court cannot be altered according to the outcome of preliminary objections; once seized of a matter the Court remains unified to the end. My dissenting judgment as to the validity of the proceedings, does not absolve me of responsibility to pronounce on the merits, in view of the majority judgment. Any such abdication of responsibility on my part, would antagonise the right of the Court to settle by majority, in cases of division of opinion, the litigable issues. Once the proceedings were held to be valid and the Court properly moved to take cognizance of the application, I was dutybound to examine the merits of the application, notwithstanding my reservations on the subject, expressed in my judgment of 13.1.1983. Nothing I heard since delivery of my ruling of 13th January, persuades me that I should review my opinion on the validity of the proceedings. On the contrary, I remain unshaken in my views. The suggestion of Mr. Loucaides that, anyone with a complaint against a Representative may move the machinery for the withdrawal

of the immunity of a representative, is untenable. The expression "competent authority" in Article 83 of the Constitution, connotes an authority competent under the Constitution to set in motion the process for a criminal prosecution and any matters related thereto; such authority is only the Attorney-General. The submission of Mr. Loucaides on the subject is incompatible with the wording of Article 83, notably the phrase "competent authority", an expression hardly compatible with a right on the part of a complainant in a criminal case to set in motion machinery for the removal of the immunity of a Representative.

My reservations must, for the reasons above given, be put on one side. I must heed the majority judgment and, upon that premise, examine the application on its merits, i.e. whether leave should be granted, in the light of the material before the Court, for the prosecution of the Representative.

As I indicated in a ruling on 14.1.1983 following the resumption of the hearing after the majority decision, we must proceed on the basis that the Attorney-General, acting in a quasi judicial capacity, has moved the Court to lift, in the public interest, the immunity of the Representative, having first satisfied himself that recourse to criminal process is not fraught with any ulterior motives antagonistic to the institution of the immunity from prosecution of Members of the House of Representatives. Therefore, we must proceed with an examination of the merits of the application and decide whether immunity should be lifted in the light of the material before the Court, consisting of—

(a) An affidavit by Mr. Kalavanas, the official of the Central Bank of Cyprus, who reported the case to the police,

(b) an affidavit of the investigating officer, Mr. Adradjiotis, as well as

(c) an affidavit of the respondent himself.

This is the first application of its kind to come before the Full Bench of the Supreme Court for adjudication. The record of the only other application, made in the history of the Cyprus Republic, before the High Court, for the withdrawal of the

immunity of a Representative, is unavailable for consultation. Inevitably, we can derive no guidance from the aforesaid decision or the reasoning behind it, except note the crimes in respect of which leave was granted to prosecute, revealed in proceedings subsequent to leave and connected with the conviction of the Representative. (See, *The Republic of Cyprus* v. *Lefkios Christodoulou Rodosthenous*, 1961 C.L.R. 152—The offences were: (a) attempting to extort money by threats, contrary to s.288(a) of the Criminal Code, Cap. 154; (b) demanding money with menaces, contrary to s.290 of the Criminal Code; and (c) stealing money by intimidation, contrary to sections 255 and 262 of the Criminal Code).

The immunity of Representatives from criminal prosecution is of supreme importance for the autonomy of the legislature and its constituent elements. It aims to keep the channels of popular expression, through the Representatives of the people, free from unnecessary obstruction. The criminal process may interfere with the composition of the House at any one time and, in that way, with the expression of popular will from the rostrum of the House. It must, therefore, be guarded jealously as a necessary measure for the protection of democratic institutions. I consider it necessary, if not imperative, given the importance of the subject and the lack of precedent, to set down the principles that should guide the Supreme Court in the exercise of its discretionary powers under Article 83 of the Constitution. This will induce certainty in the law, on a subject of great constitutional importance. The need for guidance is all the greater because of the uniqueness of the procedure adopted in Cyprus, whereby the exercise of the jurisdiction for the withdrawal of immunity is entrusted to the Courts, as opposed to the House of Representatives, which is the case with every other country, to which reference was made. (See, inter alia, *Article* 62 *of the* 1975 *Greek Constitution*; *Article* 26 *of the French Constitution of* 1958 (*revised in* 1963); *Article* 46 *of the basic law of the Federal Republic of Germany*; *Article* 68 *of the Italian Constitution* (*revised in* 1967)).

Some juridical guidance may be obtained from the works of Greek authors on constitutional law, postulating the criteria for the exercise of the power by the popular assembly. (See, *N. I. Saripolos—Constitutional Law*, *Vol.* 1, 1874, p. 441, *para.*

524 *et seq.*; *N. I. Saripolos—Constitutional Law, Vol.* 4, 1875, *p.* 291 *et seq.*; *Raikos on Lessons on Constitutional Law, Vol.* 1, 1976, *p.* 193 *et seq.*; *Kyriacopoulos—Greek Constitutional Law, 4th ed., p.* 289 *et seq.* and, *Sgouritsas* on *Constitutional Law, Vol.* 1, 1959, *p.* 294 *et seq.*). The subject is also illuminated by debates in the Greek parliament on applications for the removal of the immunity of Representatives. (See, *Official Minutes of the Greek Parliament for the Meetings between* 10.10.1960 and 16.12.1960 and the *Official Minutes for the Sessions of the Greek Parliament* between 6.1.1981 and 28.3.1981).

There is uniformity of opinion that parliamentary immunity is a privilege of the Representative assembly and only incidentally a privilege of individual Representatives. Being a privilege of the House, it cannot be unilaterally waived by any Member of it. It can only be waived if waiver is in the public interest. The public interest emerges after balancing dangers to the autonomy and sovereignty of the popular assembly, likely to result from the withdrawal, on the one hand and, the vital interest of the public that every alleged offender be brought to justice, on the other.

Immunity is lifted with great circumspection, as the practice of the Greek House of Representatives reveals. It is, as a rule, denied for offences that do not compromise the dignity and honour of the House and, for offences that have a political undertone.

Counsel for the respondent informed us that, of the 145 applications made to the Greek parliament during its last three sessions, from December, 1974, none was entertained.

In Cyprus, by entrusting parliamentary immunity to the judicial authorities of the State, the constitutional legislators intended to remove the exercise of the jurisdiction for the removal of immunity from the spectrum of politics.

The discretion vested in the Supreme Court must be exercised judicially. The Court must strive to safeguard the autonomy of the House of Representatives while endeavouring to eliminate abuse of the privilege. Below, we indicate some of the

salient considerations that should guide the Court in carrying out this balancing exercise. They relate to:-

1) *The nature of the offence:*

The nature of the offence or offences for which leave to prosecute is sought, is of paramount importance. If the offence is directly or indirectly related with the political activities of a Representative outside the House, leave may be withheld, unless such activities tend to undermine constitutional order. Freedom of expression of Representatives must be safeguarded in the interests of the sovereignty of the people and their right to express their views through their Representatives.

If the offence carries no political connotations, its nature must be then examined from a narrower angle, i.e. the calibre of the offence. If the commission of the offence involves an element of dishonesty or moral turpitude, reluctance to accord leave may subside. This approach is consonant with the letter and spirit of Articles 64 and 71 of the Constitution, laying down the qualifications for a Representative and providing for the forfeiture of his seat upon conviction for an offence involving dishonesty or moral turpitude.

2) *The gravity of the offence:*

The offence or offences for which leave is sought to prosecute a Representative, must be grave from the legal and factual point of view. Prosecuting a Representative for a trivial offence, may be properly regarded as unnecessary harassment and an unjustifiable interference with the exercise of his parliamentary duties.

The facts founding the prosecution need not be stated in detail. A summary of material facts is sufficient. The review of the investigatory process and the quality of the evidence is a matter for the Attorney-General who must first satisfy himself of its adequacy before moving the Court for leave. Leave, where granted, should be confined to a prosecution properly arising from the facts thus disclosed.

3) *Political motivation:*

The absence of any political motivation for the prosecution, or any ulterior motive connected therewith, is a prerequisite,

both for the decision of the Attorney-General as well as the decision of the Court. It would be an abuse to use the judicial process as an instrument for the attainment of political ends and would undermine the autonomy of the House of Representatives.

The Court will refrain from pronouncing on the quality of the evidence intended to be adduced, or its implications on the guilt or innocence of the accused. Its task is limited to ascertaining whether the facts disclose an offence or offences known to the law and capable of sustaining the charges in question. The inquiry must be confined to the objective implications of the facts.

The Facts: Hereinabove, we have indicated some of the prominent factors that should bear with the exercise of the Courts' discretion. Guided by these considerations, we have examined the facts placed before us. What emerges from this inquiry, is the following:

There is evidence in the hands of the prosecuting authority, tending to connect a Representative with the commission of serious offences, involving dishonesty and elements of moral turpitude. The offences were committed in circumstances totally unrelated to the parliamentary duties of the Representative, inside and outside the House. They were allegedly committed in his capacity as a lawyer, in the course of his dealings with clients. Investigation began as a result of a report to the police by an official of the Central Bank of Cyprus, because of irregularities noticed in the course of his duties. Reporting the case to the police, he was, in no way, politically motivated. If excessive zeal was shown thereafter in the investigation of the offences, that is no reason for withholding leave. Every investigation into a crime, must be conducted as speedily as possible. In such circumstances, to withhold leave would put the Representative, be it temporarily during the life of the present House of Representatives, outside the compass of the law. This should not be countenanced in view of the nature and gravity of the offences. Therefore, leave is granted to prosecute Representative Georghios Afxentiou Georghiou, on the basis of the facts disclosed to the Court.

Suggestions for the making of rules of Court to regulate pro-

ceedings for the leave of the Supreme Court to lift the immunity of a Representative:

The Supreme Court is empowered, under Article 163 of the Constitution, to make rules regulating the practice and procedure of the Supreme Court in any matter triable by the Supreme Court. Under Article 163, the procedure for the making of an application under Article 83, as well as the procedure before the Supreme Court, may be regulated. The division of opinion at the Supreme Court in this case as to what is the proper procedure to be followed, if nothing else, warrants the making of such rules.

It has been said time and again that the effective protection of fundamental freedoms and liberties is directly associated with procedural safeguards. Without attempting to foreclose the jurisdiction of the Supreme Court on the matter, such rules should provide as a necessary safeguard, for the privilege of the House of Representatives, that applications under Article 83 should be made by the Attorney-General and be accompanied by a statement of the Attorney-General, signifying that he has personally taken cognizance of every aspect of the case and that he is of the opinion that leave to prosecute ought to be given in the public interest.

TRIANTAFYLLIDES P.: In the result the present application is granted unanimously.

Application granted.