1983 October 31

[STYLIANIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

LOUKIS KRITIOTIS,

Applicant,

v.

1. THE MUNICIPALITY OF PAPHOS, THROUGH THE MUNICIPAL COUNCIL OF PAPHOS,
2. THE REPUBLIC OF CYPRUS, THROUGH
   (A) THE MINISTER OF INTERIOR,
   (B) THE CENTRAL COMMITTEE FOR THE PROTECTION OF ABANDONED TURKISH OWNED PROPERTIES
   (C) THE DISTRICT OFFICER OF PAPHOS,
   (D) THE DISTRICT COMMITTEE OF PAPHOS FOR THE PROTECTION OF ABANDONED TURKISH OWNED PROPERTIES,

Respondents.

(*Case No.* 137/83).

Judge—Disqualification—Bias—Impartiality—Principles applicable—Recourse against grant of building permit by Municipal Corporation—Objection that Judge disqualified because Municipal Engineer of respondent Corporation his nephew—Engineer not a party to the proceedings and having no interest therein—Appropriate authority for issuing building permits under the relevant Law the respondent Corporation and not the Municipal Engineer—Nature of sub judice act and grounds of its impeachment creating no interest in the Municipal Engineer for the outcome of this case—Objection not entertained.

By means of a recourse against the Municipality of Paphos and the Republic of Cyprus through (a) the Minister of Interior, (b) the Central Committee for the Protection of Abandoned Turkish owned Properties, (c) the District Officer and (d) the District Committee of Paphos for the Protection of Abandoned Turkish owned Properties, the applicant challenged the validity of a building permit issued for the building on Plot 609,

abandoned Turkish Cypriot property, and prayed for the annulment of the decision by respondents No. 2 whereby the Turkish Cypriot property—Plot No. 609—was allocated to the interested party and was not granted to the applicant to be used by him in connection with his restaurant.

The issue of the building permit was challenged in the recourse on the following specific grounds:-

(a) The interested party was not the owner;

(b) The issue of the building permit was contrary to the object of the requisition order of the Turkish Cypriot property; specific grounds were set out in support of the allegation that such building permit was beyond the scope of the requisition order; and,

(c) The decision and the issue of the building permit by the Municipality of Paphos were unlawful, being contrary to Article 23, para. 8, of the Constitution and The Requisition Law No. 21 of 1962.

After the respondents had raised the issues that the applicant lacked a legitimate interest, that the act or decision challenged was not an executory or administrative act and that the recourse was out of time, which with the consent of the parties and the directions of the Court were to be dealt with preliminarily, counsel for the applicants submitted that the Judge was disqualified on the ground that he was related to the Municipal Engineer of Paphos Municipality, the relationship being third degree of consanguinity. It was common knowledge that the Municipal Engineer of respondents No. 1 was the nephew of the Judge.

Though counsel for the appellant stated that the integrity of the Judge was indisputable and there was no actual bias or want of good faith his submission was based on the fact that the impression of the applicant, if he loses his case, will be that justice was not manifestly seen to be done and he elaborated on the principle that justice should not only be done but also appear to be done.

Held, after setting out the principles governing the imparliality of the Courts—vide pp. 1466-1479 post, that impartiality denotes absence of prejudice or bias; that the test is the opinion of the

reasonable and fair-minded person who knows all the relevant facts and surmise or conjecture is not enough; that the guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact and when there is any cause incapacitating a member of this Bench, he is the first to exclude himself; that to accede to applications for the exclusion of Judges in any given case in the absence of proper justification would undermine the impersonal and proper administration of justice; that given that the Municipal Engineer is within the third degree of kindred with the Judge and nothing else besides this kinship was mentioned and that he is an officer of the corporation and he is not and cannot under the Law be a member of the Corporation; that given, also, that he may be dismissed only after a resolution by the Council passed by a majority of at least two-thirds of the councillors and he is neither a party of record nor is he a person represented by any person nor is he a person who has an interest in these proceedings; that given, further, that the appropriate authority under the Streets and Buildings Regulation Law, Cap. 96, for the issue of building permits within the municipal area of Paphos is respondent No. 1, the Municipal Committee of the Municipality of Paphos, and the sub judice decision is a decision of a corporate body who take full responsibility for their decision; and that taking into consideration the issues which were raised and which, by consent of the parties and the direction of the Court, were to be dealt with preliminarily, just before the objection was taken; and, also, taking into consideration the fact that this is not a case in which the Municipal Corporation on the advice of the Municipal Engineer refused to grant a building permit to an applicant because of faulty drawings or of anything within the ambit of the capacity of the Municipal Engineer and that the nature of the act and the grounds of its impeachment create no interest in the Municipal Engineer for the outcome of this case, the Court is unable to accede to the request of counsel for the applicant; accordingly the objection must be dismissed.

Objection dismissed.

Cases referred to:

Metropolitan Properties (F.G.C.) Ltd. v. *Lannon & Others* [1969] 1 Q.B. 577 at p. 599;

Regina v. *Altrincham Justices Ex parte N. Pennington* [1975] 1 Q.B. 549 at p. 552;

In re Azinas (1980) 1 C.L.R. 466;

In re Malikides (1980) 1 C.L.R. 472;

HjiCosta v. *Anastassiades* (1982) 1 C.L.R. 296;

Alison v. *General Council of Medical Education and Registration* [1894] 1 Q.B. 750 at p. 758;

R v. *Rand and Others* [1866] 1 Q.B. 230 at p. 232;

King v. *Sussex Justices, Ex parte McCarth* [1924] 1 K.B. 256 at p. 258;

Franklin and Others v. *Minister of Town and Country Planning* [1947] 2 All E.R. 289 at p. 296;

R. v. *Barnsley Licensing Justices* [1960] 2 All E.R. 703 at p. 715;

R. v. *Nailsworth Justices, Ex parte Bird* [1953] 2 All E.R. 652 at p. 654;

Hannam v. *Bradford City Council* [1970] 2 All E.R. 690 at p. 700;

R. v. *McLean, Ex parte Aitken and Others* [1975] 139 J.P. 261 at p. 266;

R. v. *Liverpool City Justices, Ex parte Topping* [1983] 1 All E.R. 490;

Queen v. *Commonwealth Conciliation and Arbitration Commission, Ex parte Angliss Group*, 122 C.L.R. 546;

Queen v. *Watson, Ex parte Armstrong*, 136 C.L.R. 248 at p. 262, 263;

Delcourt Case (1970) Series A. No. 11;

Piersack Case of 1.10.1982 Series A. No. 53;

Vassiliades v. *Vassiliades*, 18 C.L.R. 10 at p. 21;

Vrakas and Another v. *Republic* (1973) 2 C.L.R. 139;

Economides and Another v. *Police* (1983) 2 C.L.R. 301;

Razis and Another v. *Republic* (1983) 3 C.L.R. 309;

Cottle v. *Cottle* [1939] 2 All E.R. 535;

Auten v. *Rayner & Others* [1958] 1 W.R. 1300;

In re Azinas (1981) 1 C.L.R. 241.

Preliminary objection.

Preliminary objection by applicant to the effect that the Judge trying the case should be disqualified on the ground that

he is related to the Municipal Engineer of the respondent Paphos Municipality.

K. Talarides, for the applicant.

K. Chrysostomides with *S. Kokkinos*, for respondent 1.

Chr. Ioannides, for respondents 2.

L. N. Clerides with *N. L. Clerides*, for interested party *A. Kareklas* and *Viomikar Ltd.*

Cur. adv. vult.

STYLIANIDES J. read the following decision. The issue that falls to be decided at this stage by this Court is whether the Judge is disqualified from dealing with this case.

Mr. Talarides for the applicant submitted that the Judge is disqualified on the ground that he is related to the Municipal Engineer of Paphos Municipality, the relationship being third degree of consanguinity. It is common knowledge that the Municipal Engineer of respondents No. 1 is the nephew of the Judge.

This recourse was filed by the applicant against the Municipality of Paphos and the Republic of Cyprus through (a) the Minister of Interior, (b) the Central Committee for the Protection of Abandoned Turkish owned Properties, (c) the District Officer and (d) the District Committee of Paphos for the Protection of Abandoned Turkish owned Properties. He challenges the validity of a building permit issued for the building on Plot 609, abandoned Turkish Cypriot property, and prays for the annulment of the decision by respondents No. 2 whereby the Turkish Cypriot property—Plot No. 609—was allocated to the interested party and not granted to the applicant to be used by him in connection with his restaurant.

The issue of the building permit is challenged in the recourse on the following specific grounds:-

(a) The interested party is not the owner;

(b) The issue of the building permit is contrary to the object of the requisition order of the Turkish Cypriot property; specific grounds are set out in support of the allegation that such building permit is beyond the scope of the requisition order; and,

(c) The decision and the issue of the buidling permit by the Municipality of Paphos are unlawful, being contrary to Article 23, para. 8, of the Constitution and The Requisition Law No. 21 of 1962.

Mr. Talarides in his submission stated that the integrity of the Judge was indisputable. There is no actual bias or want of good faith. He based his submission on the fact that the impression of the applicant, if he loses his case, will be that justice is not manifestly seen to be done and he elaborated on the principle that justice should not only be done but also appear to be done. He referred to the following English cases: *Metropolitan Properties (F.G.C.) Ltd.* v. *Lannon & Others*, [1969] 1 Q.B. 577; *Regina* v. *Altrincham Justices, Ex-parte N. Pennington*, [1975] 1 Q.B. 549, and to *In re Azinas*, (1980) 1 C.L.R. 466; *In re Malikides and Others*, (1980) 1 C.L.R. 472; and *Hji-Costa* v. *Anastassiades*, (1982) 1 C.L.R. 296. He also cited the Californian Code of Civil Procedure, section 170 (3).

Mr. Lefcos Clerides, whose argument was adopted by the two counsel appearing for the respondents, objected to the challenge on four grounds:-

First, the proper authority for the issue of a building permit is the Municipal Committee of Paphos and that the Municipal Engineer is no more than an employee of the Municipality who did not take the sub judice decision. Secondly, there is no allegation in the recourse that the building permit is faulty, being outside or contrary to the building regulations. Thirdly, there are no factual issues in dispute but only legal issues. Fourthly, Mr. Savvas, the Municipal Engineer, is neither a party to the proceedings nor interested, nor represented by any party in the proceedings and the Judge is not related to any of the parties to these proceedings.

Mr. Chrysostomides described the submission as absurd in the surrounding circumstances of the case. He noted the lack of any case of administrative Courts on the matter; he described the role of the Municipal Engineer as that of an employee and/or technical adviser; he stated that the respondent Municipal Committee takes full responsibility for the sub judice building permit and concluded that it would be a

dangerous and unacceptable precedent for the Cyprus situation in administrative recourses to refer back to the relationship of the one or the other Judge to a member of the civil service who incidentally or coincidentally or by virtue of the legislation takes part in the formation of an administrative act or omission.

Mr. Talarides in reply argued that the Municipal Committee relies on the advice and decision of the Municipal Engineer who takes active part in the issue of a building permit. He further said that he would raise another ground against the validity of the building permit, namely, that it is contrary to Zoning Order No. 2 of 1977 and that the building permit is illegal because it was given contrary to the consent of the owner, if the owner is the Government and not the Turkish owner. He added that a question may arise as to the knowledge by the applicant of the administrative act challenged earlier than 75 days before the filing of the recourse, and the Municipal Engineer might be called as a witness, and that his sole capacity as a witness disqualifies the Judge from hearing him.

It is a cardinal principle of law of fundamental importance to the administration of justice that justice should not only be done but should manifestly and undoubtedly be seen to be done. This is well rooted in our system of law and in the Common Law of England from which we inherited so much.

In *Allinson* v. *General Council of Medical Education and Registration*, [1894] 1 Q.B. 750, Lord Esher, M.R., stated at p. 758:-

> "We are bound to act upon the decision of this Court in *Leeson* v. *General Council of Medical Education and Registration*, 43 Ch.D. 366..... I think that in that case the majority of the Court decided, that where a person who has taken part in the judicial proceedings, or, you might say, has sat in judgment on the case, has any pecuniary interest in the result, however small, the Court will not inquire whether he was really biassed or likely to be biassed..... But *Leeson's case* also decides that there are other relations to the matter of a person who is to be one of the Judges which may incapacitate him from acting as a Judge, and they held that the crucial question is, as Bowen, L.J., said, whether in substance and in fact one of the Judges

has in truth also been an accuser. What is the meaning of that? The question is to be one of substance and fact in the particular case. What is the fact which has to be decided? If his relation is such that by no possibility he can be biassed, then it seems clear that there is no objection to his acting. The question is not, whether in fact he was or was not biassed. The Court cannot inquire into that. There is something between these two propositions. In the administration of justice, whether by a recognised legal Court or by persons who, although not a legal public Court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biassed. To use the language of Mellor, J., in *Reg.* v. *Allan*, 4 B. & S. 915, at p. 926, 'It is highly desirable that justice should be administered by persons who cannot be suspected of improper motives'. I think that if you take that phrase literally it is somewhat too large, because I know of no case in which a man cannot be suspected. There are some people whose minds are so perverse that they will suspect without any ground whatever. The question of incapacity is to be one 'of substance and fact', and therefore it seems to me that the man's position must be such as that in substance and fact he cannot be suspected. Not that any perversely minded person cannot suspect him, but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biassed".

In *R.* v. *Rand and Others*, L.R. [1866] 1 Q.B. 230, Blackburn, J., said at p. 232:-

"The question which we have to determine, was whether this disqualifies the justices from acting in what was certainly a judicial inquiry: and we think it does not. There is no doubt that any direct pecuniary interest, however small, in the subject of inquiry, does disqualify a person from acting as a judge in the matter;..... Wherever there is a real likelihood that the judge would, from kindred or any other cause, have a bias in favour of one of the parties, it would be very wrong in him to act".

Lord Hewart, C.J., in *The King* v. *Sussex Justices ex parte McCarth*, [1924] 1 K.B. 256, at p. 258 made the following pronouncement that was repeated in many cases ever since:-

> "It is not merely of some importance but is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. The question therefore is not whether in this case the deputy clerk made any observation or offered any criticism which he might not properly have made or offered; the question is whether he was so related to the case in its civil aspect as to be unfit to act as clerk to the justices in the criminal matter. The answer to that question depends not upon what actually was done but upon what might appear to be done. Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice".

There can be no impartiality without bias. "Bias" was defined by Lord Thankerton in *Franklin and Others* v. *Minister of Town and Country Planning*, [1947] 2 All E.R. 289, at p. 296, as follows:-

> "I could wish that the use of the word 'bias' should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires from those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute".

Lord Devlin laid the test as follows in *R.* v. *Barnsley Licensing Justices*, [1960] 2 All E.R. 703, at p. 715:-

> "We have to satisfy ourselves that there was a real likelihood of bias, and not merely satisfy ourselves that that was the sort of impression which might reasonably get abroad. The term 'real likelihood of bias' is not used, in my opinion, to import the principle in *R.* v. *Sussex JJ., Ex p. McCarthy*, [1924] 1 K.B. 256, to which Salmon, J., referred in [1959] 2 All E.R. at p. 641. It is used to show that it is not neces-

sary that actual bias should be proved. It is unnecessary and, indeed, might be most undesirable to investigate the state of mind of each individual justice. 'Real likelihood' depends on the impression which the Court gets from the circumstances in which the justices were sitting. Do they give rise to a real likelihood that the justices might be biased? The Court might come to the conclusion that there was such a likelihood without impugning the affidavit of a justice that he was not in fact biased. Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although, nevertheless, he may have allowed it unconsciously to do so. The matter must be determined on the probabilities to be inferred from the circumstances in which the justices sit".

Lord Denning, M.R., preferred the test of appearance of bias to that of actual bias. In *Metropolitan Properties Co. (F.G.C.) Ltd.* v. *Lannon*, [1969] 1 Q.B. 577, at p. 599, he said:-

"In considering whether there was a real likelihood of bias, the Court does not look at the mind of the justice himself or at the mind of the chairman of the tribunal, or whoever it may be, who sits in a judicial capacity. It does not look to see if there was a real likelihood that he would, or did, in fact favour one side at the expense of the other. The Court looks at the impression which would be given to other people. Even if he was as impartial as could be, nevertheless if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part, then he should not sit. And if he does sit, his decision cannot stand: see *Reg.* v. *Huggins*, [1895] 1 Q.B. 563; and *Rex* v. *Sunderland Justices*, [1901] 2 K.B. 357, C.A. per Vaughan Williams, L.J., at p. 373. Nevertheless there must appear to be a real likelihood of bias. Surmise or conjecture is not enough: see *Reg.* v. *Camborne Justices, Ex parte Pearce*, [1955] 1 Q.B. 41, 48-51 and *Reg.* v. *Nailsworth Licensing Justices, Ex parte Bird*, [1953] 2 All E.R. 652, D.C. There must be circumstances from which a reasonable man would think it likely or probable that the justice, or chairman, as the case may be, would, or did, favour one side unfairly at the expense

of the other. The Court will not inquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence: and confidence is destroyed when right-minded people go away thinking: 5
'The judge was biased' ".

In *R.* v. *Nailsworth Justices, Ex Parte Bird,* [1953] 2 All E.R. 652, at p. 654, Lord Goddard, C.J., observed:-

"Objection cannot be taken to everything which might raise a suspicion in somebody's mind—As Day, J., said 10
in *R.* v. *Taylor etc. JJ. Laidler Ex p. Vogwill* (14 T.L.R. 185): 'anything at any time which could make fools suspect'. It is not something which raises doubt in somebody's mind that is enough to cause an order or a judgment of justices to be set aside. There must be something in 15
the nature of real bias. The fact that a person has a proprietary or a pecuniary interest in the subject-matter before the Court which he does not disclose, has always been held to be enough to upset the decision of the Court, but merely that a justice may be thought to have formed 20
some opinion beforehand is not, in my opinion, enough to do so".

Cross, L.J., in *Hannam* v. *Bradford City Council,* [1970] 2 All E.R. 690, expressed the view that there is little, if any, difference between the test of "real likelihood of bias" and 25
"reasonable suspicion of bias". At p. 700 he said:-

"I would just add a few words on the question of bias. To my mind, there really is little (if any) difference between the two tests which are propounded in the cases which have been cited to us. If a reasonable person who has 30
no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think that there might well be bias, then there is in his opinion a real likelihood of bias. Of course, someone else with inside know- 35
ledge of the characters of the members in question might say: 'Although things don't look very well, in fact there is no real likelihood of bias'. But that would be beside the point, because the question is not whether the tribunal will in fact be biased, but whether a reasonable man with 40

no inside knowledge might well think that it might be biased".

Lord Widgery, C.J., laid down the following test in *R.* v. *McLean, Ex Parte Aikens and Others*, (1975) 139 J.P. 261, at p. 266:-

"I ask myself whether a reasonable and fair-minded person sitting in Court and hearing these various exchanges would have come to the conclusion that the magistrate had shown such bias against these applicants that a fair trial was not to be had".

In *R.* v. *Altrincham Justices, Ex parte N. Pennington*, [1975] Q.B. 549, at p. 552, the same Chief Justice said:-

"There is no better known rule of natural justice than the one that a man shall not be a judge in his own cause. In its simplest form this means that a man shall not judge an issue in which he has a direct pecuniary interest, but the rule has been extended far beyond such crude examples and now covers cases in which the judge has such an interest in the parties or the matters in dispute as to make it difficult for him to approach the trial with the impartiality and detachment which the judicial function requires".

And at p. 553, after referring to the pronouncement of Lord Denning in *Lannon's case*, observed:-

"In the course of *Lannon's case* the two tests to which I have already briefly referred were themselves applied. The first test was whether there was a real likelihood of bias, and the second whether there was reasonable suspicion of bias. It is not altogether clear to me how the matter was left in *Lannon's case* so far as which of those tests was the correct one to apply in a given case, and we have been reminded today that in a later case of *Reg.* v. *Eastern Traffic Area Licensing Authority, Ex parte J. Wyatt Jnr. (Haulage) Ltd.* (see [1974] R.T.R. 480), when similar points were argued before this Court, I observed that it was unnecessary in that case to express any view in regard to the competing tests of real probability of bias or reasonable suspicion of bias".

In the recent case of *R.* v. *Liverpool City Justices, ex parte*

Topping, [1983] 1 All E.R. 490, Ackner, L.J., applied the following test:-

> "Would a reasonable and fair-minded person sitting in Court and knowing all the relevant facts have a reasonable suspicion that a fair trial for the applicant was not possible?".

The High Court of Australia in *The Queen* v. *Commonwealth Conciliation and Arbitration Commission, Ex Parte Angliss Group*, 122 C.L.R. 546, in a joint judgment delivered by all 7 members then constituting the Court, said at p. 553:-

> "Those requirements of natural justice are not infringed by a mere lack of nicety but only when it is firmly established that a suspicion may reasonably be engendered in the minds of those who come before the tribunal or in the minds of the public that the tribunal or a member or members of it may not bring to the resolution of the questions arising before the tribunal fair and unprejudiced minds".

Four out of 5 Judges of the High Court of Australia in *The Queen* v. *Watson, Ex Parte Armstrong*, 136 C.L.R. 248, in a joint written judgment, after considering the true test and the English case law on the matter, had this to say at p. 262:

> "It would be wrong to regard to observations of Lord Hewart, C.J., in *R.* v. *Sussex Justices, Ex parte McCarthy*, as meaning that the appearance of justice is of more importance than the attainment of justice itself. However, his statement of principle, which was recently reaffirmed in this Court in *Stollery* v. *Greyhound Racing Control Board* does go to the heart of the matter. It is of fundamental importance that the public should have confidence in the administration of justice. If fair-minded people reasonably apprehend or suspect that the tribunal has prejudged the case, they cannot have confidence in the decision".

And further down at p. 263:-

> "The fact that prerogative writs did not lie to a superior Court did not mean that the rule that a judge who might reasonably be suspected of bias should not hear the cause was not applicable to superior Courts; it meant only that

a particular remedy was not available to redress a departure from the rules of natural justice if it occurred in a superior Court. It would be absurd to suggest that the administration of justice should be less pure in a superior than in an inferior Court, or that the confidence upon which justice rests is less necessary in the case of the former than in the latter. The rule that a judge may not sit in a cause in which he has an interest has been applied to the most eminent of judicial officers: *Dimes* v. *Proprietors of the Grand Junction Canal*, 10 E.R. 301. In the same way, the rule that a judge may not sit to hear a case if it might reasonably be considered that he could not bring a fair and unprejudiced mind to the decision applies to every Court in Australia".

The principle on impartiality is enshrined and guaranteed by Article 30.2 of our Constitution, the relevant part of which reads:-

"In the determination of his civil rights and obligations or of any criminal charge against him, every person is entitled to a fair and public hearing within a reasonable time by an independent, impartial and competent Court established by law".

This part of our Constitution is identically worded as Article 6(1) of the European Convention on Human Rights for the protection of Human Rights and Fundamental Freedoms, which was ratified by Law No. 39 of 1962.

In *Delcourt Case*, (1970), Series "A", No. 11, it was held that Article 6(1) of the Convention does not compel the Contracting States to set up Courts of appeal or of cassation. Nevertheless, a State which does institute such Courts is required to ensure that persons amenable to the law shall enjoy before these Courts the fundamental guarantees contained in Article 6 and that a danger of serious consequences might ensue if the opposite view were adopted, and the Court proceeded:-

"In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6(1) would not correspond to the aim and the purpose of that provision. Therefore, Article 6(1) is

indeed applicable to proceedings in cassation. The way in which it applies must, however, clearly depend on the special features of such proceedings".

The attendance of the procureur général at the deliberations of the Court were found not to be incompatible with Art. 6(1) of the Convention. This system established by Belgian legislation was extensively considered, and the Court had this to say:-

"The preceding considerations are of a certain importance which must not be underestimated. If one refers to the dictum 'justice must not only be done; it must also be seen to be done' these considerations may allow doubts to arise about the satisfactory nature of the system in dispute. They do not, however, amount to proof of a violation of the right to a fair hearing. Looking behind appearances, the Court does not find the realities of the situation to be in any way in conflict with this right".

In the judgment of *Piersack Case*, of 1.10.1982, Series "A", No. 53, we read at paragraph 17:-

"The Court of Cassation also took into consideration of its own motion Article 6, para. 1 of the Convention and the general principle of law establishing the right to the impartiality of the Court. It was true that both of these norms obliged a judge to refrain from taking part in the decision if there were a legitimate reason to doubt whether he offered the guarantees of impartiality to which every accused person was entitled. However, the Court held that the documents which it could take into account did not reveal that after the public prosecutor's department had received the covering note mentioned in the ground of appeal, Mr. Van de Walle, who was then a senior deputy to the Brussels procureur du Roi, had taken any decision or intervened in any manner whatsoever in the conduct of the prosecution relating to the facts in question. Admittedly, for a judge's impartiality to be regarded as compromised on account of his previous intervention in the capacity of judicial officer in the public prosecutor's department, it was not essential that such intervention should have consisted of adopting a personal standpoint

in the matter or taking a specific step in the process of prosecution or investigation".

The matter was taken up by the Court of Human Rights. Mr. Van de Walle, the judge who presided over the Assize Court, had previously served as a senior deputy to the Brussels procureur du Roi; until his appointment to the Court of Appeal he was the head of section B of the Brussels public prosecutor's department, this being the section dealing with indictable and non-indictable offences against the person and, therefore, the very section to which Mr. *Piersack's* case was referred.

On the strength of this fact the applicant argued that his case had not been heard by an "impartial tribunal". The Court said (paragraph 30):-

"Whilst impartiality normally denotes absence of prejudice or bias, its existence or otherwise can, notably under Article 6(1) of the Convention, be tested in various ways. A distinction can be drawn in this context between a subjective approach, that is endeavouring to ascertain the personal conviction of a given judge in a given case, and an objective approach, that is determining whether he offered guarantees sufficient to exclude any legitimate doubt in this respect.

(a) As regards the first approach, the Court notes that the applicant is pleased to pay tribute to Mr. Van de Walle's personal impartiality; it does not itself have any cause for doubt on this score and indeed personal impartiality is to be presumed until there is proof to the contrary.

However, it is not possible to confine oneself to a purely subjective test. In this area, even appearances may be of a certain importance. As the Belgian Court of Cassation observed in its judgment of 21st February, 1979, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw. What is at stake is the confidence which the Courts must inspire in the public in a democratic society".

I turn now to the Case Law in this country on the matter.

In *Aphrodite N. Vassiliades* v. *Artemis N. Vassiliades & Another*, 18 C.L.R. 10, a Privy Council case, objection was

taken that the judgment appealed from was a nullity on the ground that the Acting President of the District Court was not competent to sit but was disqualified because he had been Official Receiver when the petition against Vassiliades was filed and had expressed an opinion adverse to the appellant in another case. That objection alleged bias and want of impartiality on the part of the Judge. Lord Wright in delivering the opinion of the Board had this to say at p. 21 of the report:-

> "The simplest type of bias is where the Judge is shown to have any pecuniary interest in the result of the proceedings: in that case it will be held at once that he is disqualified, however small the interest and however clear it may be that his mind could not have been affected. A striking illustration of this type is afforded by *Dimes* v. *Grand Junction Canal Coy*, 3 H.L.C. 759, where that fact that the Lord Chancellor who presided at the hearing in the House of Lords had inadvertently failed to disclose a small interest he had in the respondent Company was held to vitiate the judgment of the House. But there are other circumstances which may be relied upon as justifying an objection that a Judge is disqualified for bias. It is then a question of substance and fact whether the objection is good. In *Allison* v. *General Medical Council*, [1894] 1 Q.B. 750, Lord Esher at p. 759 explained the criterion for rejecting the objection to be 'not that any perversely minded person cannot suspect him but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biassed'. That was a case in which bias was alleged on the ground that the person adjudicating had actively co-operated in bringing the charges which were being investigated, but the Court held that as he had taken no part in the prosecution, the objection of bias failed. In the present case the acting President of the District Court had taken no part in or in regard to the proceedings to set aside the transfers, either when he was Official Receiver or in any other capacity. Nothing is alleged or suggested to show that he was not capable of bringing an entirely impartial mind to the hearing of the particular application. No reasonable person could think that he was biassed or 'in substance and in fact' liable to be even suspected of bias merely because in the past in an official position

he had dealt with matters in which the appellant was concerned. Their Lordships agree with the Supreme Court in rejecting this objection".

In *Panteli Vrakas and Another* v. *The Republic*, (1973) 2 C.L.R. 139, counsel for the appellants raised for the first time on appeal the point that the composition of the Assize Court was defective in that one of the three Judges of the said Court was disqualified from sitting as a trial Judge as he was the Judge who had held in that case the preliminary inquiry and committed the appellants for trial. It was argued in this respect that the Judge in question in committing the appellants for trial at the preliminary inquiry had made up his mind under s.93(c) of the Criminal Procedure Law, Cap. 155, that there were "sufficient grounds" for committing the accused for trial and, therefore, he was disqualified from sitting as a trial Judge because "he was not capable of bringing an entirely impartial mind to the hearing" of the case at the trial and in the course of the preliminary inquiry he ruled on the admissibility of evidence. Counsel further argued that in the circumstances, though the impartiality of the Judge in question was not to be doubted in the least, nevertheless a cardinal principle of law had been violated, as it is "of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done", and he referred to *The King* v. *Sussex Justices, Ex parte McCarthy*, [1924] 1 K.B. 256.

The Court of Appeal after reviewing the English authorities, approved the test that there must appear to be a real likelihood of bias and dismissed the objection.

In the recent unreported case of *Phaedon G. Economides and Another* v. *The Police*, Criminal Appeals No. 4405–4406,* A. Loizou, J., after referring to the judgment of Ackner, L.J., in *R.* v. *Liverpool City Justices, ex parte Topping*, [1983] 1 All E.R. 490, said:–

"The reactions of a reasonable and fair-minded person acquainted with the facts of a case as to the test of bias, approved above, offers, it seems to us, in most cases a reliable test to determine whether there is bias in a given

* Now reported in (1983) 2 C.L.R. 301.

case. But we must not be taken as adopting a hard and fast rule for all the cases. Nor should we overlook the realities of Cyprus, always relevant when it comes to applying the law in this country".

The statement of Mr. Chrysostomides that there is no precedent in Cyprus administrative Courts is correct. Only in *Razis & Another* v. *The Republic*, (1983) 3 C.L.R. 309, applicants' counsel requested that the trial Judge ought to refrain from taking up the case as the legal issues that arose with regard to the substance of the recourse came under judicial pronouncement by the same Judge in a previous recourse which was filed by the same applicants. A. Loizou, J., held that the pronouncement on a legal issue should not disqualify a Judge from entertaining the same legal question or question in a subsequent case whether that be between the same parties or other parties; if a different view was taken, there would be hardly Judges available to try cases as time and again the same legal issues come up for determination by the Courts, and he added that there is the further safeguard of the right of appeal to the Full Bench from the judgment of a single Judge of this Court; he declined to accede to the request of counsel and proceeded with the hearing of the recourse.

Justice is administered in this country by trained, professional Judges whose impartiality is renowned.

Kinship is, depending on the circumstances, a ground for disqualification. (see *R.* v. *Rand* (supra)).

In *Lannon's case* (supra) the Chairman of the Rent Assessment Committee, a solicitor, lived with his father in a flat owned by a company in same group as appellant landlords, and had advised tenants in contention with that other company over their rent; it was held that he was disqualified.

In *Cottle* v. *Cottle*, [1939] 2 All E.R. 535, a case for desertion, the Chairman of the Bench was a friend of the wife's mother. It was proved that the wife has said that she would obtain a summons to be set down for hearing when this particular Justice was presiding, and that he would "put him (the husband) through it". It was held by Sir Boyd Merriman, P., that this

particular husband in the circumstances might reasonably have formed the impression that the Chairman of the Court could not give this case an unbiassed hearing.

In *Auten* v. *Rayner & Others*, (1958) 1 W.R. 1300, the relationship of the Home Secretary, who was acting to some degree judicially, did not disqualify him and the plaintiff on the facts could not reasonably suspect that the Home Secretary's determination was tainted with bias. The case of *Cottle* v. *Cottle* was distinguished.

In this country in *Re Azinas*, [1980] 1 C.L.R. 466, leave to apply for certiorary and prohibition were granted to quash a ruling by means of which the trial Judge has decided that he was not disqualified from continuing the trial of a criminal case by the fact that his wife has published in a newspaper a letter hostile to the accused-applicant.

In Re Malikides & Others, (1980) 1 C.L.R. 472, Triantafyllides, P., who was the godfather of a daughter of one of the applicants, said that he felt no difficulty in entertaining the proceedings before him and *In re Azinas & Others*, (1981) 1 C.L.R. 241, the same Judge said about the intention of the Attorney-General to submit that he was disqualified from acting judicially in cases to which he was the godfather of one of the daughters of a party, that he did not share such a view.

It emerges from the above that the requirements of natural justice must depend on the circumstances of each particular case. What is fair in a given situation depends upon the circumstances.

I endeavoured to set out the principles governing the impartiality of the Courts. These principles apply not only to the Courts of Law, inferior and superior, but to all bodies, disciplinary boards, administrative authorities, etc., which take decisions that have legal results and affect the interests of the citizen. Objection to a Judge, where bias or reasonable suspicion of bias is alleged, has to be taken at the earliest stage in the proceedings and has to be decided by the Judge concerned. His decision is always subject to judicial review.

The right of the citizen to have his civil disputes and criminal

charges against him determined by impartial Courts was traditionally part of our Law. It has, however, been constitutionally enshrined and safeguarded by the provisions of Art. 30.2 of the Constitution which is cast in identical words with the relevant part of Art. 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, ratified by Law No. 39 of 1962.

Impartiality denotes absence of prejudice or bias. There can be no unfairness or impartiality without bias. We are not concerned with actual bias. There is the subjective approach and the objective approach. In the objective approach the Judge should offer the guarantees sufficient to exclude any legitimate doubt. The test is the opinion of the reasonable and fair-minded person who knows all the relevant facts. Surmise or conjecture is not enough. The suspicion is that of a reasonable fair-minded person and not a fanciful suspicion by a party.

The right to a fair hearing requires a Court to appreciate impartially all the matters of fact and of law submitted to it by both parties, with reference to the particular issues it is called upon to decide. The Judge must think dispassionately and submerge private feeling on every aspect of a case. On the whole, however, Judges do lay aside private views in discharging their judicial functions. This is achieved through training, professional habits, self-discipline and that fortunate alchemy by which men are loyal to the obligation with which they are entrusted. It is also true that reason cannot control the subconscious influence of feelings of which it is unaware.

When there is ground for believing that such subconscious feelings may operate in the ultimate judgment, or may not unfairly lead others to believe they are operating, Judges recuse themselves. The guiding consideration is that the administration of justice should reasonably appear to be disinterested as well as be so in fact. When there is any cause incapacitating a member of this Bench, he is the first to exclude himself. On the other hand, to accede to applications for the exclusion of Judges in any given case in the absence of proper justification, would undermine the impersonal and proper administration of justice. As was said in *Hadjicosta* v. *Anastassiades*,

(1982) 1 C.L.R. 296, at p. 299, "sensitive though we remain to the views of the parties on the delicate subject under consideration, it would be injudicial and wrong in principle to make the composition of the Court dependent on the whims of the parties".

In the present case the Municipal Engineer is within the third degree of kindred with the Judge. Nothing else besides this kinship was mentioned. The Municipal Engineer is an officer of the Corporation. He is not, and cannot, under the Law be a member of the Municipal Corporation. He may be dismissed only after a resolution by the Council passed by a majority of at least two-thirds of those councillors who shall be present at a meeting of the Council specially convened for the purpose after notice of not less than seven or more than fourteen days before the meeting and with the approval of the District Officer. He is neither a party of record nor is he a person represented by any person nor is he a person who has an interest in these proceedings.

The appropriate authority under the Streets and Buildings Regulation Law, Cap. 96, for the issue of building permits within the municipal area of Paphos is respondent No. 1, the Municipal Committee of the Municipality of Paphos. The sub judice decision is a decision of a corporate body who, in the words of Mr. Chrysostomides, take full responsibility for their decision.

The issues, which were raised and which, by consent of the parties and the direction of the Court, were to be dealt with preliminarily, just before the objection was taken, as formulated, are:-

(a) The applicant lacks a legitimate interest;

(b) The act or decision challenged is not an executory or administrative act; and,

(c) This recourse is out of time.

The grounds of which the sub judice decision of the Municipality is challenged were set forth earlier on in this judgment. It is not a case in which the Municipal Corporation on the advice of the Municipal Engineer refused to grant a building permit

to an applicant because of faulty drawings or of anything within the ambit of the capacity of the Municipal Engineer. The nature of the act and the grounds of its impeachment create no interest in the Municipal Engineer for the outcome of this case.

Having considered with the utmost care and consciousness the objection raised and the ground thereof, the nature and circumstances of the case, I find myself unable to accede to the request of counsel for the applicant.

Hearing of the case to proceed.

Order accordingly.