

1983 September 27

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

ATTORNEY-GENERAL OF THE REPUBLIC,

Applicant,

v.

GEORGHIOS AFXENTIOU GEORGHIOU,

Respondent.

(Application No. 1/83).

5 *House of Representatives—Member of—Convicted of offences involving moral turpitude and sentenced to imprisonment—His seat becomes vacant upon his conviction—No leave of the Supreme Court for the enforcement of the sentence of imprisonment is necessary—Articles 64(c), 71(c) and 83.2 of the Constitution.*

10 The respondent, a practising advocate, and a member of the House of Representatives, was convicted on the 30th August, 1983 by the Assize Court of Larnaca on two counts of forgery and on two counts of uttering a false document and was sentenced to one year's imprisonment on each of the four counts, the sentences to run concurrently. In view of the provisions of Articles 83, 71 and 64 of the Constitution, the question arose before the Assize Court whether the seat of the accused in the House of Representative became vacant upon his conviction or whether he was still considered as a Member of the House and leave of the Supreme Court for his imprisonment was required; and the Assize Court in the relevant warrant of commitment to prison, whereby the Divisional Police Commander of Larnaca and all other Police Officers in Cyprus were commanded to take the respondent and convey him to the prison at Nicosia and there deliver him to the officer in charge thereof inserted the words "subject to the provisions of the Constitution".

15 Hence this application by the Attorney-General of the Republic for:

25 "(1) A decision that the conviction of the respondent Member

of the House of Representatives, Mr. Georghios Afxentiou Georghiou, for the offences of forgery and uttering false documents provided by sections 331, 335, 337 and 339 of the Criminal Code, Cap. 154, according to the decision of the Assize Court of Larnaca of the 30th August, 1983, caused automatically the loss of the representative capacity of the respondent from the time of his conviction so as to be possible and imperative the immediate execution of the sentence of imprisonment on him by the Assize Court of Larnaca; and

- (2) In case where the Supreme Court decides that the said conviction did not have as a result the loss of the representative capacity of the respondent, an application is submitted, for leave for the execution of the sentence of imprisonment which was imposed by the Assize Court as regards the said conviction."

Held, Triantafyllides, P., Loris and Stylianides, JJ. dissenting, that since the respondent has been convicted of offences involving moral turpitude his seat has become vacant upon conviction and consequently no question of leave of this Court under Article 83.2 of the Constitution for his imprisonment is necessary.

Per Pikis, J.:

In my judgment, the convictions resulted in loss of office. The accused ceased to be a Representative. That being the case, jurisdiction to enforce the sentence of imprisonment under Article 83.2, cannot be invoked. We have no discretion in the matter. The law must take its course and, the warrant of imprisonment must be executed.

Obviously we had to rule on our amenity to deal with the application for the enforcement of the sentence of imprisonment. As we are of opinion and so find and declare that consequent upon the judgment of the Larnaca Assize Court the accused forfeited his seat as a Representative, we have no jurisdiction to exercise. The sentence of imprisonment is enforceable ipso jure and the warrant of imprisonment must be executed. This finding and declaration puts an end to the proceedings before us.

(2) *Per* Hadjianastassiou, J.:

In my judgment the inescapable conclusion in the light of the

5 mandatory constitutional provisions is that upon conviction for
an offence involving dishonesty or moral turpitude, as in this
case, the representative forfeits his seat. Therefore, I associate
myself with Pikis, J., and for the reasons given in his judgment
10 that we have no discretion to suspend the enforcement of the
sentence of imprisonment. Along with A. Loizou, Malachtos
and Pikis, JJ. I find and declare that the accused forfeited his
seat as a representative upon conviction by the Larnaca Assize
Court. Therefore, we have no discretion to suspend the en-
forcement of the sentence of imprisonment. This declaration
puts an end to the proceedings before us.

(3) *Per A. Loizou, J.:*

15 In the present case since there exists the element of the con-
viction of the respondent on four offences which undoubtedly
involve as of their nature dishonesty and moral turpitude and
were indeed so described also by the Full Bench of this Court in
its judgment, - and in view of the interpretation I have given to
the term "convicted of an offence", I have come to the conclu-
sion that the seat of the respondent as a Representative has
20 become vacant upon the occurrence of his conviction and con-
sequently no question of the leave of this Court under Article
83.2 of the Constitution for his imprisonment is necessary, once
he has vacated his seat as a representative and I hereby make a
declaration accordingly.

25 *Per Malachtos J.:*

There can be no doubt that the offences for which the respon-
dent was convicted involve dishonesty and moral turpitude.
This was certified by this Court when granting leave for the pro-
secution of the respondent in the case of *In Re Georghiou* (1983)
30 2 C.L.R. page 1.

To my mind the provisions of Article 71(c) and 64(c) of the
Constitution are clear and unambiguous. As soon as the re-
spondent was convicted by the competent Court his seat in the
House of Representatives should be considered as vacated. It
35 makes no difference that the respondent has filed an appeal
against his conviction in the meantime. His privilege for special
treatment under Article 83.2 of the Constitution comes to an
end and from that time onwards he should be treated like any

other citizen of the Republic who finds himself in the same situation.

It follows from the above that the application under consideration, in its present form, which is based on Article 83.2 of the Constitution, cannot be entertained as the seat of the person concerned became vacant upon his conviction by the competent Court. 5

The net result of my decision is that the warrant of Commitment to prison of the respondent ought to have been executed forthwith, immediately after it was signed. 10

Order accordingly.

Cases referred to:

- In re Georghiou* (1983) 2 C.L.R. 1 at p. 14;
Attorney-General of the Republic v. Ibrahim, 1964 C.L.R. 195;
Stow and Others v. Houry and Others, 24 C.L.R. 206; 15
Protopapa v. Djordjic and Others (1963) 2 C.L.R. 162;
Rodosthenous v. Republic, 1961 C.L.R. 382;
Chokolingo v. Attorney General of Trinidad [1981] 1 All E.R. 244;
Re Racal Communication Ltd. [1980] 2 All E.R. 634;
Dyson Holdings Ltd. v. Fox [1975] 3 All E.R. 1030; 20
Pearlman v. Harrow School [1979] 1 All E.R. 365;
Minister of Home Affairs v. Fisher [1979] 3 All E.R. 21;
Police v. Georghiades (1983) 2 C.L.R. 33 at pp. 45, 51;
Duport Steels Ltd., v. Sirs [1980] 1 All E.R. 529;
Stock v. Frank Jones (Tipton) Ltd. [1978] 1 All E.R. 948; 25
R. v. Chichester Justices [1982] 1 All E.R. 1000;
R. v. Gateshead Justices [1981] 1 All E.R. 1027;
Cyprus Grain Commission v. The New Vatyli Co-operative Credit Society, 4 R.S.C.C. 91, at pp. 92-93;
Ioannides v. Republic (1979) 3 C.L.R. 295 at pp. 304, 305, 306, 334, 30
 335, 338, 339;
Hinds v. The Queen [1976] 1 All E.R. 353;
X. v. Austria (Applic. No. 1237/61) 5 Yearbook of the European
Convention on Human Rights, 96 at p. 100;
Christofi v. Police (1970) 2 C.L.R. 117; 35
Georghadji and Another v. Republic (1971) 2 C.L.R. 229;

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

Consuelo Salgar de Montejo v. The State of Columbia (decision of the Human Rights Committee of the United Nations delivered on 24.3.82).

Delcourt case, 13 Yearbook of the European Court of Human Rights p 1100 at p 1120.

Application.

Application by the Attorney General of the Republic under Article 83.2 of the Constitution for a declaration that the conviction of respondent Representative entailed automatically loss of office and vacation of his seat in the House of Representatives.

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

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

Cur. adv. vult.

20 TRIANTAFYLIDIS P.: The first judgment of the Court will be delivered by Pikiis, J.

25 PIKIS J.: With the leave of the Supreme Court given under the provisions of Article 83.2 of the Constitution,* Georghios Afxentiou Georghiou, a member of the House of Representatives, a Representative for the Larnaca district, was prosecuted on two counts of forgery and two counts of uttering the same forged documents. The accused pleaded not guilty to the charges. After a long trial the Assize Court of Larnaca found the charges proven and recorded a verdict of guilty, on 30th August, 1983. As may be surmised from the record of the Assize Court produced before us, the core of the facts supporting the convictions was the same as the summary of the facts for which leave was given to prosecute the Representative.

35 Very briefly the case found proven against the Representative, was the following:

The offences were committed in connection with the exercise

* See the Ruling of 14th January, 1983, *In Re Georghiou* (1983) 2 C.L.R. 1, 14 et seq.

of his duties as a lawyer. He practises as an advocate at Larnaca. A sum of £3,453.- was collected for a client residing in the United Kingdom. Notwithstanding assurances given to his client and her representative in Cyprus that the money had been deposited in her name and that steps were taken for permission to despatch it to the U.K., nothing had been done in that direction. To reassure her and her representative that all was in order, the accused forged a deposit receipt of a commercial bank and made it to read that the monies collected on behalf of the client had been deposited in her name and, then, forged a second document that purported to issue from the Central Bank, authorising the transfer of the monies to the U.K. under the Exchange Control Laws. And all this, was accomplished in order to lend credence to his misrepresentations about the fate of the monies of his client. Meantime, the monies were in his possession, apparently put to uses of his own. Before the institution of criminal proceedings the money was refunded to the lawful owner, together with the interest it would have attracted had it been deposited, in the first place, in the name of the client. Upon these facts, the Assize Court convicted him on two counts of forgery, involving the forgery of the aforementioned documents, and on two counts of uttering, contrary to the relevant provisions of the Criminal Code, notably sections 331 and 335 in connection with the forgery counts, and sections 20, 331, 335 and 337, relevant to the uttering counts. In committing the aforementioned acts the accused was found to have been activated by an intent to defraud his client. The Court sentenced the accused to concurrent terms of one year imprisonment.

Conflicting submissions were made before the Assize Court as to the enforceability of the sentence. Mr. Loucaides submitted that the convictions sealed the fate of his seat in the House of Representatives. The Representative, it was submitted, forfeited his seat because his convictions involved dishonesty as well as moral turpitude, entailing the vacancy of his seat in the House of Representatives under the provisions of Article 71(c) of the Constitution. Mr. Christofides for the accused, submitted the Assize Court had no jurisdiction to pronounce on the forfeiture of a parliamentary seat, but only the Supreme Court could, in appropriate circumstances, deliberate and rule on the matter. In a Ruling preceding the issue

of a warrant of imprisonment, issued under the provisions of the Criminal Procedure Law, they expressed doubts as to their competence to pronounce on the implications of the convictions upon the status of the accused as a Representative, and inclined to the view that the issue was one for the Supreme Court. For this reason, they endorsed their warrant, otherwise directing the immediate imprisonment of the accused, with a jurat, in the following terms "Subject to the provisions of the Constitution". To my comprehension the jurat itself adds nothing to the warrant, nor does it detract from its enforceability. All warrants of imprisonment must comply with the provisions of the Constitution. No one can go to prison contrary or in defiance to the provisions of the Constitution. If they thought they had no jurisdiction to issue a warrant of imprisonment, they should have refrained from issuing one. whereas, if they were of opinion that they should suspend it, pending a decision of the Supreme Court, they should have attached appropriate conditions of suspension.

Following the decision of the Assize Court, Mr. Loucaides treated the order of imprisonment as a live issue and made an application before the Supreme Court for a declaration that the conviction of the Representative entailed automatically loss of office and vacation of his seat. Having regard to the nature of the offences and facts giving rise thereto, a declaration along these terms would obviate the need for leave for the imprisonment of a Representative under Article 83.2 of the Constitution. In the alternative, he prayed for the leave of the Supreme Court to enforce the warrant of imprisonment notwithstanding continuance in office as a Representative.

The application is based on the provisions of four articles of the Constitution, namely 64, 71, 83 and 149. It is, I must confess, difficult to see the relevance of Article 149 in the context of this application. Article 149 confers upon the Supreme Court, as the vestees of the powers of the Supreme Constitutional Court under Law 33/64, power to interpret the Constitution in case of ambiguity. Far from acknowledging the existence of any ambiguities, Mr. Loucaides argued that the relevant provisions of the Constitution, namely those of Articles 71 and 64 pertinent to the vacation of the seat of a Representative upon conviction for offences involving dishonesty or moral

turpitude, are clear to the point of merely having to state them
 for their interpretation to suggest itself. As I read Article
 149(b), assumption of jurisdiction thereunder for the resolution
 of a constitutional ambiguity, is only justified if decision is
 necessary for the determination of a case tried by a lower
 Court or in the event of conflict between organs or authorities
 of the State, as to the effect of constitutional provisions or,
 conceivably, between a citizen and an organ of the State. Pro-
 ceedings under Article 149 can only be entertained if there is
 a real ambiguity, that is, the meaning of a constitutional provi-
 sion is prima facie susceptible to more than two interpretations.
 The relevant rules of the Supreme Court* require leave of the
 Supreme Court for initiation of the proceedings and specific
 directions for the definition of the issue and its determination
 consequent upon leave. Needless to say, a case of ambiguity
 in the context of the Constitution can only be made out if the
 relevant constitutional provisions are, on the face of them, or
 in the context of the Constitution, equivocal as to what they
 import. A question of ambiguity does not arise whenever
 conflicting submissions are made as to the construction or inter-
 pretation of constitutional provisions, or where rival opinions
 are expressed as to the application of constitutional provisions
 in the given circumstances of a case. I shall concern myself
 no further with Article 149, substantively and procedurally
 irrelevant to the determination of the proceedings before us.

The gravamen of the application for the Attorney-General
 concerns the issue of a declaration by the Supreme Court that
 the Representative lost his seat as a result of his conviction, and
 that in consequence thereto, his imprisonment should follow
 automatically. The procedural basis for making such an appli-
 cation was not clearly indicated. The only provision of the
 Constitution cited in support of the submission, that we have
 substantive jurisdiction to make such a declaration, is Article
 85, not cited in the application. Mr. Christofides for the
 accused, took a completely different view from that expressed
 by Mr. Loucaides as to the effect of Article 71(c) of the Consti-
 tution and the implications of the conviction of the accused
 upon his status and occupation of his seat as a Representative.
 On a purposive interpretation of the Constitution, the House

* Rule 15(2)(b) of the Supreme Constitutional Court Rules.

of Representatives is the body competent to decide whether the seat of Representative Georghiou was vacated. This is not the only departure we were invited to take from a literary interpretation of the provisions of Article 71(c). We were invited to hold that "conviction" should be construed as meaning, conviction by a competent Court affirmed on appeal in case an appeal is filed, as in this case, against the verdict of the trial Court. Pending such confirmation, the prisoner, if I understood correctly the submission, stands unconvicted and is at liberty to move without hindrance inside and outside the House of Representatives. He acknowledged however, provided I comprehended rightly his address, that a grammatical construction of Articles 71(c) and 64(c) supports the view that forfeiture of the seat of a Representative follows upon conviction for specified offences. It is profitable at this stage to cite the provisions of Articles 71(c) and 64(c). Article 71 reads:-

"The seat of a Representative shall become vacant—

- (a) upon his death;
- (b) upon his written resignation;
- (c) upon the occurrence of any of the circumstances referred to in paragraph (c) or (d) of Article 64 or if he ceases to be a citizen of the Republic;
- (d) upon his becoming the holder of an office mentioned in Article 70". (This is the provision that concerns us).

Article 64 reads:-

"A person shall be qualified to be a candidate for election as a Representative if at the time of the election that person—

- (a) is a citizen of the Republic;
- (b) has attained the age of twenty-five years;
- (c) has not been, on or after the date of the coming into operation of this Constitution, convicted of an offence involving dishonesty or moral turpitude or is not under any disqualification imposed by a competent Court for any electoral offence;
- (d) is not suffering from a mental disease incapacitating such person from acting as a Representative".

In aid of the submission that the Court possesses jurisdiction to take cognizance of the present proceedings and grant an appropriate declaration, Mr. Christofides relied upon the provisions of Article 139 vesting jurisdiction in the Supreme Court to adjudicate finally “in connection with any matter relating to any conflict or contest of power or competence arising between the House of Representatives and the Communal Chambers or anyone of them and between any organs of, or authorities in, the Republic”. On the one hand, Article 139 can only be invoked in the context of a recourse specifically sanctioned under rule 15(2)(b)—Supreme Constitutional Court Rules—and then, subject to such terms as may be approved by the Court for the proper elucidation of the conflict between organs or authorities of the State, with a view to its resolution. Inasmuch as the present proceedings were neither pursued nor sanctioned under Article 139, we cannot notice or attempt to resolve any conflict between organs of the State. Further, no such conflict has been brought to our notice. All we have before us is a dispute between the parties to the proceedings, respecting the implications of the conviction of the accused upon his status as a Representative and his liability to serve the prison sentence imposed by the trial Court. The submission that the House of Representatives has exclusive authority to adjudicate upon the fate of the parliamentary seat held by the accused, is an issue that merits consideration in proceedings under Article 83.2. For, before assuming jurisdiction under the aforementioned article, we must first be satisfied that the accused is a Representative.

JURISDICTION OF THE SUPREME COURT TO TAKE COGNIZANCE OF THE PROCEEDINGS:

Nature of the Jurisdiction:

The Constitution does not confer, by any of its provisions, directly or by necessary implication, unlimited jurisdiction upon the Supreme Court to resolve constitutional issues independently of the dispute of the parties or its context. What it does, is to vest jurisdiction in the Supreme Court to resolve specific issues as in the case of Articles 139, 144 and 149. Here again, the assumption of jurisdiction is not automatic but, as indicated respecting Articles 139 and 149, it is subject to obtaining prior

leave of the Supreme Court and dependent on compliance with conditions that may be imposed as to the definition of the issues in dispute. On the other hand, the procedure for reference of constitutional issues to the Supreme Court essential for the determination of a case*, has been rendered superfluous by the enactment of the Administration of Justice (Miscellaneous Provision) Law—33/64—See, *The Attorney-General of the Republic v. Mustafa Ibrahim And Others*, 1964 C.L.R. 195. Mere reference to the Supreme Court of an issue involving the interpretation or application of constitutional provisions, does not empower us to assume jurisdiction.

Reliance was placed by Mr. Loucaides upon the provisions of Article 85 empowering the Supreme Court to make, in appropriate circumstances, declarations about the composition of the House of Representatives and the right of an elected Representative to hold a seat in the House. Firstly, the application is not based on Article 85 and no reference is made to it in the application. Secondly, Article 85 is not a procedural but a substantive constitutional enactment establishing the basis for the resolution of disputed questions affecting validity of the candidature for election of proferred Representatives, as well as election petitions. The Election of Members of the House of Representatives Law—72/79, aims to regulate comprehensively matters under Article 85, including the procedure to be followed. Article 85 deals exclusively with the validity of elections and matters antecedent and consequent thereto. An electoral objection must be lodged before the Electoral Court established under the provisions of Law 72/79, within one month from the date of the election. I am disinclined to probe further the provisions of Article 85, procedurally and substantively irrelevant to the proceedings in hand. Section 41 of the Courts of Justice Law vests jurisdiction in a Court exercising civil jurisdiction, to make binding declarations of rights, independently of any consequential relief. It reproduces the jurisdiction acknowledged by the common law to the Courts to make binding declarations of right in appropriate cases. It is a jurisdiction that is exercised with great circumspection and never as an alternative to the pursuit of a specific relief, where one is available. And then, subject always to observing strict

* Article 144.I.

procedural requirements—See, inter alia, *G. W. Stow And Others v. F. Houry And Others*, 24 C.L.R. 206, *Lleni G. Protopoulos v. Pavlis K. Djordjis And Others* (1963) 2 C.L.R. 162. I mention limitations for the issue of a declaratory judgment in passing for the issue does not pose for consideration. Under s.41—Law 14/60—jurisdiction for making a declaratory judgment does not vest in the Supreme Court but in Courts of first instance, unless first instance jurisdiction is specifically conferred on the Supreme Court. 5

On the strength of the above analysis of the jurisdictional aspect of the case, I am driven to the conclusion that the only basis upon which jurisdiction could be exercised with regard to the fate of the convicted Representative, is under Article 83.2 of the Constitution, provided his conviction did not result in the loss of his status as a Representative. The plain provisions of Article 83.4 clearly suggest that jurisdiction can only be assumed in relation to the enforcement of an order of imprisonment, only where the accused continues to be, after conviction, a Representative. It reads:- 10

“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” 20

That the exercise of jurisdiction under Article 83.2 presupposes the holding of office by the accused, is certainly warranted by the unambiguous provisions of Article 83.4. Also, it is supported by authority as well. In *Lefkios Ch. Rodosthenous v. The Republic*, 1961 C.L.R. 382, the Supreme Court refused to take cognizance of an application for leave to enforce a sentence of imprisonment upon a Member of the House of Representatives, because it appeared that the accused ceased to be a Representative after conviction. Jurisdiction under Article 83.2 could only be assumed in relation to an accused who did not forfeit his office as a result of his conviction. And as it appeared on a preview of the record of the trial Court that the conviction entailed loss of office, they declined jurisdiction and adjudged the Republic to pay costs for instituting 25 30 35

unnecessary proceedings. The convictions of the fallen Representative were for—

- (a) stealing,
- (b) attempting to extort money by threat, and
- 5 (c) demanding money with menace.

contrary to the provisions of sections 255, 288(c) and 290 of the Criminal Code, respectively. The judgment of the Court is instructive in another respect as well. It is open to the Supreme Court to examine for purposes of jurisdiction the record
10 of the Court that imposed the sentence of imprisonment in order to decide *prima facie* or finally on the implications of the conviction upon the position of a Member of the House of Representatives after conviction.

Consequently, the first question is whether we have jurisdiction
15 to deal with the application before us. Decision depends on the implications of the conviction of the accused in the light of the provisions of Articles 71 and 64 of the Constitution.

Mr. Loucaides submitted that the conviction of the accused brought about automatically forfeiture of his seat as a Representative.
20 Assuming that to be the position, we have no jurisdiction or any discretion for that matter to postpone or suspend for any period the enforcement of the sentence of imprisonment. Mr. Christofides for the accused, submitted that the conviction of the accused by the A-size Court, independently of the nature
25 or calibre of the offences, did not involve forfeiture of the seat of the accused, for two reasons: Because—

- (a) A conviction in the context of s.71 should be construed as a conviction confirmed by the Court of Appeal. Short of such affirmation, no conviction should be
30 deemed as having been recorded. Consequently, the accused remains unconvicted for the purposes of s.71, and any application to enforce the sentence upon him is premature. He is, in his submission, an unconvicted Representative who retains, pending
35 confirmation of the conviction on appeal, his position and the immunity conferred by Article 83.2.
- (b) Alternatively or supplementary to the above, he remains

a Representative irrespective of any conviction, until the House of Representatives proclaims, by a decision of the House, his seat as vacant consequent upon a conviction. The House of Representatives has exclusive jurisdiction to declare a seat in the House vacant. 5

In support of the first submission made above, counsel cited the provisions of Article 66.2, requiring that a vacancy occurring in the House of Representatives, should be filled by a by-election to be held within 45 days. It cannot have been the intention of the makers of the Constitution, he argued, to have envisaged the filling of vacancy in the House while an appeal was pending. A ludicrous situation would arise if a by-election was held in the meantime and subsequently the Representative was acquitted on appeal. The Court, should, in view of the provisions of Article 66.2 and the need to sustain the efficacy of the right to appeal, give a teleological interpretation to the provisions of Article 71.3, and construe the word "conviction" as meaning "a conviction by a competent Court of first instance sustained on appeal". The argument here presupposes inability of the judicial system to dispose of an appeal expeditiously and contemplation of such inability by the makers of the Constitution. 10
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In support of his second submission above, he drew attention to the pattern of the Cyprus Constitution and the strict separation of the three powers of the State adhered to them—the Executive, the Legislative and Judicial. Recognizing jurisdiction to the House of Representatives to decide upon matters relevant to the exclusion of a Member from office, is, he argued, consistent with the separateness of the legislative power and its autonomy. Moreover, in the case of *Rodosthenous*, the House of Representatives, by an unpublished decision, proclaimed that power vested in the House to declare the seat of a convicted Representative vacant. Thereafter, they decided by a secret vote to expel Rodosthenous. 25
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A proper application of the doctrine of separation of powers requires, each power should be supreme in its sphere, separate from the others, institutionally empowered to function without the concurrence of the other powers of the State. The autonomy of anyone of the branches of the State does not entail power 35

to assume all functions affecting the particular branch directly or indirectly, independently of the nature of the jurisdiction. In the same way as the competence and local jurisdiction of Courts subordinate to the Supreme Court may legitimately
 5 be regulated by the legislature and, in fact it is, so may a function of a judicial nature affecting the House of Representatives be resolved by the judicial power of the State. Few would disagree that it is primarily a judicial function to determine whether a conviction emanates from a competent Court and whether the
 10 offence involves dishonesty or moral turpitude. In *Chokolingo v Attorney-General of Trinidad* [1981] 1 All E.R. 244 (P.C.), it was declared that under a constitutional system of separation of powers, it is the function of the Judiciary to interpret the law and declare its applicability to given circumstances (see,
 15 also, *Re Racal Communications Ltd.* [1980] 2 All E.R. 634 (HL) —the judgment of Lord Diplock in particular).

*THE INTERPRETATION OF THE CONSTITUTION—
 MEANING OF “CONVICTION” IN ARTICLE 71:*

Who decides about the forfeiture of a seat in the House of Representatives:
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The interpretation of the wording of any enactment, and that includes the Constitution is a matter of law—*Dyson Holdings Ltd v Fox* [1975] 3 All E.R. 1030, *Pearlman v. Harrow School* [1979] 1 All E.R. 365. Arguably, if it was not so, society would
 25 be bedevilled by endless disputes about the effect of the law.

The Constitution is no ordinary statute. It is a basic source of law and, as such, it is cast in a separate category. In *Minister of Home Affairs v. Fisher* [1979] 3 All E.R. 21, the Privy Council subscribed to the view that the Constitution is a sui generis
 30 document, the interpretation of which is not governed by the ordinary rules of construction of statutes, but should be interpreted subject to the usages and background that led to its formulation or parts of it. Brother Judges Hadjianastassiou, Loris, as well as myself, found the principles laid down in *Fisher*
 35 salutary and equally applicable to the interpretation of the Constitution of Cyprus—see, *Police v. Georghuades* (1983) 2 C.L.R. 33, 45, 51. However, unlike Articles 15 and 17 of the Constitution what we were required to interpret in *Georghuades*, Articles 64(c) and 71(c) are not modelled on any
 40 international usage nor fashioned to the Constitution of any

particular country. Counsel agreed that little guidance may be gained from a consideration of the Constitution of other countries regarding the forfeiture of parliamentary seats. In Greece, under the 1975 Constitution, the forfeiture of a parliamentary seat upon loss of the necessary qualifications for office, is automatic but in case of dispute as to whether the qualifications were lost, the matter is resolved by a special Court set up under Article 100 of the Constitution. But, as explained by *Raikos*, in his work on the *Lessons of Constitutional Law*, Part A, at p. 205, the decision of the Court is declaratory of what has occurred, and not in itself definitive of the situation. In England, conviction for a criminal offence does not involve forfeiture of the seat of a Member of the House but may cause the House to expel the convicted Member. Expulsion does not in itself incapacitate the Member from re-election—See, *Halsbury's Laws of England*, Vol. 34, para. 1104. Only an adjudication of bankruptcy under the *House of Commons Disqualification Act 1957*, disqualifies a Member from sitting or voting in the House of Commons or any of its committees. It is worthy of notice that disqualification follows upon adjudication and not upon confirmation on appeal, notwithstanding the fact that disqualification ceases if, for any reason, the adjudication is annulled—see, *Halsbury's Laws of England*, Vol. 34, para. 1105. In the United States of America the Constitution provides by virtue of Article 1(5)(1), that each legislative chamber decides about the qualifications of the Members and their right to sit in the House.

By a series of provisions, the makers of the Cyprus Constitution evinced a clear intention that matters relevant to the composition of the House of Representatives should be resolved by competent Courts of the land. Questions pertinent to the qualifications of a candidate and his right to sit in the House after an election, are “finally adjudicated by the Supreme Constitutional Court” in virtue of the provisions of Article 85. Whether a person has the qualifications, envisaged by Article 64, to be a Representative, is a question exclusively amenable to the jurisdiction of the Court. If the Constitution intended that competence to sit in the House be a matter of judicial deliberation, it is natural to presume that it was intended to assign to the Judiciary all matters relevant to the right of a person to occupy a seat in the House. In giving leave to prosecute the

accused in this case, we had opportunity to debate the structure of the Constitution of Cyprus in this area and point out that the manifest intention of the constitutional drafters was to leave matters affecting the composition of the House to the judicial authorities of the State, removing such issues from the spectrum of politics—*In Re Georghiou* (1983) 2 C.L.R. 1 et seq. Support for this view is also derived from the case of *Rodosthenous*. The Court did not relate in any way forfeiture of the seat of a Representative to a declaration or proclamation of the House of Representatives on the subject. On the contrary, they associated the issue of forfeiture with the implications of a conviction as reflected from the record of the Court of trial.

The Constitution does not tie forfeiture of a parliamentary seat to any declaration of the effects of a conviction. Forfeiture arises upon conviction, so it is laid down in Article 71(c). If a dispute arises as to the effects of a conviction, the matter no doubt will be resolved by a competent Court of law. If the nature of the conviction imports disqualification, no one can ignore it; everyone has a duty to notice it and implement it. And that includes all authorities of the State. This reading of the Constitution is perfectly warranted by the plain provisions of the Constitution. Far from evincing an intention to qualify the effect of the clear provisions of Article 71(c), the makers of the Constitution reinforced their intention by other provisions of the Constitution. They contemplated conviction as operating similarly as a disqualification to sit in the House, or remain a Representative. The word “conviction” cannot have but the same meaning in Articles 64(c) and 71. In fact, in Article 71, it is not specifically mentioned. It is incorporated by reference to Article 64(c). If an issue arose whether a candidate in parliamentary elections became disqualified as a result of a conviction, all the Court would have to determine, would be to determine the effects of the conviction. On authority, as well, we are bound to hold that upon conviction for an offence involving dishonesty or moral turpitude, disqualification follows automatically. In *Rodosthenous* the Court declined jurisdiction because it appeared that on consideration of the record of the trial Court, the convictions caused the forfeiture of the seat of the Representative. Therefore, no one had power under the law to suspend the enforcement of the sentence of imprisonment. More recently, in giving leave to prosecute the accused,

the Supreme Court expressed itself in terms that leave no doubt that conviction for offences of dishonesty and moral turpitude imports forfeiture of the seat of the Representative. These pronouncements were not made parenthetically but formed part of the ratio decidendi of the case, in that reflection upon the consequences of conviction was held to be a relevant consideration to deciding whether to give or withhold leave for a prosecution. And as the offences for which leave was sought appeared to be offences involving dishonesty and moral turpitude, leave was, on account of that consideration, inter alia, granted. For withholding leave, might result in interfering with the composition of the House by allowing a Representative, who possibly committed offences, disqualifying him from seating, to occupy a seat in the House. *In Re Georghiou* (1983) 2 C.L.R. 1, Triantafyllides, P., put the matter this way, as recorded at p. 20 of the report:

“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”.

Malachtos, Loris and Stylianides, JJ., concurred with the judgment of the learned President, and subscribed to the view

above expounded. A. Loizou, J., was of the same opinion. He said at p. 24:

5 “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 Article 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 the representative becomes vacant. This means that if the respondent is found guilty 10 of them that would result in vacating his seat in the House of Representatives”.

Hadjianastassiou, J., and myself, inclined to the same view in separate judgments given in the same case.

15 In the light of the above authoritative interpretation of Article 71, I regard the matter settled by precedent as well. The cases of *Rodosthenous* and *In Re Georghiou* established another proposition of relevance to the present proceedings. It is this. The conviction envisaged by Article 71(c) is a conviction by a competent Court of first instance. Even if the interpretation 20 of “conviction” in the context of Article 71(c) was free from authority, one would be driven to the same conclusion, both on a literal and purposive interpretation of the relevant constitutional provisions.

25 The word “conviction” (καταδίκη), is a word with a settled meaning in daily parlance and legal terminology. Whether used in the popular sense or as a term of art, it connotes the same thing, conviction by a competent Court of law. Is there anything in the Constitution to indicate an intention that the word “conviction” should be read in any other sense? I am 30 of opinion the answer is definitely in the negative. Earlier it was explained that the word “conviction” cannot but have the same meaning under Articles 64 and 71. Should we suppose that the constitutional makers intended persons convicted of offences involving moral turpitude to be eligible as candidates 35 for the House of Representatives if their conviction was under appeal? The question has only to be asked for the answer to suggest itself. And the answer is, in my view, No. To my mind the word “conviction” has such a clearly defined meaning that it would be arbitrary on my part, under any circumstances, to

add qualifications that modify dramatically its meaning. In *Duport Steels Ltd. v. Sirs* [1980] 1 All E.R. 529, it was observed that the impartiality of the Judiciary, so essential for the continuance of the rule of law, would be jeopardised if Judges, under the guise of interpretation, provide preferred amendments to statutes in order to remedy anomalies that may arise from the application of the law, as expressed by its makers. In another case it was emphasised that anomalies as such, provide no justification for the Judiciary to deviate from express provisions of a statute, except in the face of overwhelming indications that the wording of the statute defies the intention of the legislator - *Stock v. Frank Jones (Tipton) Ltd.* [1978] 1 All E.R. 948. 5 10

Nowhere in the Constitution is there any provision casting doubt on the use by the Constitution of the word "conviction" in Article 71 in its ordinary connotation. The word "conviction" is encountered in other provisions of the Constitution, in its usual sense. In Article 11.2(a) "conviction" by a competent Court constitutes proper authority for this immediate restriction of liberty, the most fundamental right of man. Conviction for any offence, it is laid down in Article 12.2, is a barrier to putting upon trial for the same offence the person convicted. Throughout the Constitution, the word "conviction" and cognate expressions, are used indistinguishably in one sense, that is conviction by a competent Court of law. 15 20

The Constitution did not safeguard a right to appeal. Its conferment and regulation were left to legislative discretion. The laws in force at the time of the introduction of the Constitution, saved by Article 188.1, the Criminal Code and Criminal Procedure Law in particular, refer to "conviction" as a conviction by a competent Court of law. How could we then suppose that the makers of the Constitution used "conviction" in a sense wholly different from its ordinary meaning a *id alien* to the system of criminal law and procedure, the English system, the adoption of which they anticipated by saving existing legislation? The answer is, any such supposition would be arbitrary and contrary to the Constitution. An unqualified right of appeal against conviction was conferred by statute, notably s.25(2) - Law 14/60. 25 30 35

I appreciate anomalies may arise in the functioning of the parliamentary system from the ousting of a Representative and

his reinstatement upon a successful exercise of the right of appeal. Responsibility for remedying them does not lie with the Courts but elsewhere. On the other hand, one must not overlook the anomalies that would certainly occur if conviction did not entail
5 unseating. The Representative convicted, be it of the gravest offence, would be at liberty to represent the public inside and outside the House of Representatives. That would be an anomaly as well, an anomaly the drafters of the Constitution intended to rule out. And so they decreed.

10 The question of who decides whether a conviction results in loss of office, is easier to answer. The consequences of the conviction are laid down in the Constitution. All organs of the State must notice them. In case of dispute as to the consequences of conviction, a competent Court must resolve the question.

15 Where a sentence of imprisonment is imposed, the trial Court must ponder the consequences of conviction in order to decide whether the sentence is immediately enforceable. The issue of a warrant of imprisonment is, in principle and on authority, a judicial act - *R. v. Chichester Justices* [1982] 1 All E.R. 1000, and
20 *R. v. Gateshead Justices* [1981] 1 All E.R. 1027.

Also the Supreme Court on a motion under Article 83.2, must first decide on the implications of the conviction as a necessary prerequisite for the exercise of jurisdiction thereunder. If, as
25 a result of a conviction, the accused ceased to be a Representative, there is no discretion to suspend the sentence and, consequently, no jurisdiction to exercise.

Therefore, we are required to determine whether the conviction of the accused resulted in forfeiture of his seat in the House of Representatives. Offence, in the context of Article 71, may
30 mean one of two things. The offence of which he was convicted, as noticed by the statute and its attributes, or the offence as reflected by the facts of the case and their intrinsic nature. It is unnecessary to give a conclusive answer. For, on either view of the meaning of "offence", the convictions entail both dishonesty
35 and moral turpitude. The identity between the offences and basic facts upon which leave to prosecute was granted and the offences and facts found proven by the trial Court, make further inquiry unnecessary. Furthermore, in giving leave, we reflected upon the nature of the offences and facts giving rise to them as a

necessary consideration for the exercise of our discretion. And we decided they involved both dishonesty and moral turpitude. Examination of the judgment of the trial Court and the convictions recorded, confirms the above.

In my judgment, the convictions resulted in loss of office. The accused ceased to be a Representative. That being the case, jurisdiction to enforce the sentence of imprisonment under Article 83.2, cannot be invoked. We have no discretion in the matter. The law must take its course and, the warrant of imprisonment must be executed. 5 10

Obviously we had to rule on our amenity to deal with the application for the enforcement of the sentence of imprisonment. As we are of opinion and so find and declare that consequent upon the judgment of the Lamaca Assize Court the accused forfeited his seat as a Representative, we have no jurisdiction to exercise. The sentence of imprisonment is enforceable ipso jure and, the warrant of imprisonment must be executed. This finding and declaration puts an end to the proceedings before us. 15

HADJIANASTASSIOU J.: Questions of great importance had to be solved in these proceedings. We took time to consider them and reflect upon the various submissions made on the interpretation and application of the relevant provisions of the Constitution particularly Articles 71(c) and 64(c). In answering them we derived guidance from two decisions of the Supreme Court namely *Lefkios Chr. Rodosthenous v. The Republic*, 1961 C.L.R. 382 and our judgment in giving leave to prosecute the accused in these proceedings *In re Georghiou* (1983) 2 C.L.R. 1, 14 et seq. 20 25

I shall not repeat the interesting arguments advanced on behalf of counsel appearing for the two sides on the implications of the relevant provisions of the Constitution affecting Parliamentarians and their immunity. Adequate reference to them is given in the judgments of my brethren. 30

The principle guide to the interpretation and application of the Constitution are the relevant provisions of the Constitution itself. In this case Articles 71(c) and 64(c). I must confess that the clarity of the language used by the constitutional legislator has simplified my task. They lay down that a repre- 35

5 sentative upon conviction by a competent Court for an offence involving dishonesty or moral turpitude forfeits his seat. No other provision of the Constitution suggests a contrary interpretation. On the contrary as pointed out in the judgment of
 10 Pikis, J. a number of other provisions of the Constitution support the same view. In my judgment the inescapable conclusion in the light of the mandatory constitutional provisions is that upon conviction for an offence involving dishonesty or moral turpitude, as in this case, the representative forfeits his seat. There-
 15 fore, I associate myself with Pikis, J. and for the reasons given in his judgment that we have no discretion to suspend the enforcement of the sentence of imprisonment. Along with A. Loizou, Malachots and Pikis, JJ. I find and declare that the accused forfeited his seat as a representative upon conviction by the
 20 Larnaca Assize Court. Therefore, we have no discretion to suspend the enforcement of the sentence of imprisonment. This declaration puts an end to the proceedings before us.

25 A. LOIZOU J.: The elaborate judgment of my brother Justice Pikis, has made my task easier as I shall be mainly recording my reservations regarding his approach as to the jurisdiction of this
 30 Court to entertain the present application, which in the last analysis could not but be treated as raising an issue of interpretation of the Constitution under Article 149(b) on an ambiguity regarding the meaning of the expression "convicted of an
 35 offence" to be found in Articles 64(c) and 71(c) of the Constitution.

An "ambiguity" has been defined in the case of the *Cyprus Grain Commission etc.*, and *The New Vatyli Cooperative Credit Society of Vatyli*, 4 R.S.C.C. p. 91 at pp. 92, 93, as follows:

30 "It is, therefore, pertinent and necessary for the determination of this Case to consider first what is meant by the term 'ambiguity' in paragraph (b) of Article 149, because in the very circumstances of this Case, it appears that an ambiguity has arisen in relation to the meaning of such term
 35 'ambiguity' in the said paragraph (b).

If a party to litigation makes a submission concerning the meaning of a provision of the Constitution, applicable to or affecting such litigation, and if such submission is different from the view shared by the trial Court or any other party in

the said litigation, or even if the trial Court takes a view concerning such meaning which is different from the view held by all the parties in such litigation, then the necessity arises for a decision on this difference of opinion concerning the meaning of the provision in question of the Constitution. 5
 In the opinion of the Court such difference of opinion, arising in the course of litigation, constitutes an 'ambiguity' in the sense of paragraph (b) of Article 149 (vide also *The Republic and N. P. Loftis*, 1 R.S.C.C. p. 34).

As this Court is vested, under Article 149(b), with exclusive competence to make interpretation of the Constitution in case of ambiguity, it follows that the Court, before which such an ambiguity has in fact arisen, as above, cannot proceed to decide that the said ambiguity does not exist, on the ground that in the opinion of such Court the meaning of the particular provision is clear, because this would amount to resolving in a certain way the difference of opinion, i.e. the ambiguity, which has arisen in the matter and thus interfering with the exclusive competence of this Court." 10 15

With regard, however, to this last paragraph of the quotation I shall be immediately dealing in view of the developments that have come about since then. 20

It would have been unnecessary for the Attorney-General of the Republic to invite this Court to entertain the present application had the Assize Court proceeded, as it could and ought to have done to resolve the matter itself, relying on the principles laid down in the case of *The Attorney-General of the Republic v. Mustafa Ibrahim and others*, 1964 C.L.R. p.195. What was said therein with regard to the procedure for references under Article 144 of the Constitution to the Supreme Constitutional Court, - which was found to be no longer applicable or necessary as the provisions of that Article had been rendered inoperative for the known reasons and that consequently all questions of alleged unconstitutionality should be treated as issues of law in the proceedings subject to revision on appeal in due course so far as the lower Courts were concerned, - is equally applicable to cases of ambiguity such as the present one as to the interpretation of the Constitution that formerly came under Article 149(b) thereof, and likewise the Assize Court should and could resolve 25 30 35

the matter regarding the meaning and effect of the aforesaid phrase itself.

5 Instead upon the conviction and sentence of the respondent on two counts of forgery and two counts of uttering forged documents contrary to ss. 331, 335, 337, 339 and 20 of the Criminal Code, Cap. 154 and upon hearing counsel on both sides as to whether the respondent ought to be immediately conveyed to prison to serve the term of imprisonment imposed on him, they decided that a constitutional question arose and they had no
10 right to resolve it and left it to the Officers to whom the Warrant of Commitment to Prison on a Conviction was addressed "to take a stand and act accordingly."

The said Warrant of Commitment to Prison was on Criminal Form No. 50 prescribed by the Criminal Procedure Rules which
15 in so far as relevant is addressed to: - "Divisional Police Commander Larnaca, Police Officer and all other Police Officers in Cyprus. You are hereby commanded" but they added thereafter the words "Subject to the provisions of the Constitution" and then there followed its usual form of saying "to take Georghios Afxentiou Georghiou of Larnaca who has been convicted on
20 on ... and convey him to the prison at Nicosia"

Once therefore the matter was not so resolved the Court has as of necessity and in the circumstances of this case to assume
25 jurisdiction by virtue of the powers conferred upon it under Article 149(b) of the Constitution and which in no way should be considered as having been taken away from it, and bearing in mind the definition of the term "ambiguity" in the Constitution given by the then Supreme Constitutional Court in the case of
30 *The Cyprus Grain Commission etc.*, (supra) which in so far as the procedure envisaged by the Constitution is concerned should now be read, as already said, in the light of the principles laid down in *Ibrahim's case* (supra) and examined whether to make a declaration as applied for, namely that the conviction of the
35 respondent for the offences in question in accordance with the judgment of the Assize Court of Larnaca of the 30th August 1983 "brought about automatically the loss of his seat as a representative in the House since the said conviction, so that the immediate execution of the sentence of imprisonment imposed
40 upon him by the Assize Court of Larnaca is both possible and imperative" is warranted in the circumstances.

In my view upon the conviction of the respondent for the offences in question his seat as a representative became vacant. That all four counts in respect of which he has been found guilty involved dishonesty and moral turpitude the Assize Court itself should have no doubt. In fact this transcends in the reasons given for imposing on the respondent its sentence. Moreover it had before it the pronouncements of this Court *In Re Georghiou* (1983) 2 C.L.R. 1, which constitute part of the reasoning of this Court in granting leave under Article 83.2 of the Constitution for the prosecution of the respondent on the same two counts of forgery and the two counts of uttering forged documents and in which he had been found guilty by them. The term "convicted" to be found in Article 64(c) of the Constitution to which reference is made in Article 71(c) thereof means convicted by a competent Court which exercises criminal jurisdiction in the first instance. This meaning is consistent with the provisions of our Criminal Procedure Law which was before Independence and is in force since then, and according to which a conviction is effective and so a sentence imposed must be executed forthwith unless otherwise ordered by the Court, as provided by Law. A conviction on a criminal charge by a Court of first instance brings about all legal consequences that the Law ascribes to it. It is not and it cannot be partly effective on the one hand as regards the commencement of the term of imprisonment and the consequential admission to prison or the forthwith payment of a fine and ineffective as regards other consequences such as the disqualification from holding an office or the becoming vacant of a seat of a representative.

Under our Criminal Procedure Law an appeal has no effect on the conviction of a person except that if successful the Supreme Court under s. 145(1) of the said Law may, subject to the provisions of s. 153 thereof - with which we are not concerned here -

"(b) allow the appeal and quash the conviction if it thinks that the conviction should be set aside on the ground that it was, having regard to the evidence adduced, unreasonable or that the judgment of the trial Court should be set aside on the ground of a wrong decision on any question of law or on the ground that there was a substantial miscarriage of justice:

Provided that the Supreme Court, notwithstanding

that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, shall dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred;

5 (c) set aside the conviction and convict the appellant of any offence of which he might have been convicted by the trial Court on the evidence which has been adduced and sentence him accordingly;

10 (d) order a new trial before the Court which passed sentence or before any other Court having jurisdiction in the matter.”

No doubt practical difficulties arise by giving this meaning to the word “convicted” to be found in the aforesaid Articles of the Constitution. But it is not for this Court to legislate and resolve
15 such problems which may in particular arise in the event a person has his conviction quashed on appeal and in the meantime, as it has been argued a by-election was held as provided by Article 66.2 of the Constitution within a period not exceeding 45 days of the occurrence of such vacancy or as the Law now stands.
20 (Law 55 of 1983) s. 2, the first unsuccessful candidate belonging to the same political party as the member whose seat was vacated becomes a representative by operation of Law.

Such problems may be avoided by the expeditious trials of appeals against convictions as the delay in the transcription of the
25 record is no reason for the delayed administration of justice. In such cases administrative arrangements will have to be made for the simultaneous preparation of the record of the Court and its availability upon the date judgment is delivered or soon afterwards.

30 On the other hand serious consequences might occur if a Representative convicted of an offence involving dishonesty or moral turpitude is allowed to perform his duties, as such, and participate in the work of the House of Representatives for as long as an appeal, which will eventually be dismissed, is pending
35 and needless to say that for this period there is no restriction provided by Law, nor any other indication as to when a pending appeal may ultimately be concluded.

The principles governing the interpretation of Constitution do

not as a rule give any right to the Courts to legislate by either adding or subtracting words. Practical difficulties which may arise in the application of the Constitution cannot be corrected by constitutional amendments or other consequential administrative or legislative measures. Otherwise a Constitutional Court would appear to have legislative powers, something contrary to the separation of powers established as in our country under the Constitution. 5

In the present case since there exists the element of the conviction of the respondent on four offences which undoubtedly involve as of their nature dishonesty and moral turpitude, and were indeed so described also by the Full Bench of this Court in its judgment. - and in view of the interpretation I have given to the term "convicted of an offence". I have come to the conclusion that the seat of the respondent as a Representative has become vacant upon the occurrence of his conviction and consequently no question of the leave of this Court under Article 83.2. of the Constitution for his imprisonment is necessary; once he has vacated his seat as a representative and I hereby make a declaration accordingly. 10 15 20

MALACHTOS J.: Georghios Afxentiou Georghiou, a practising advocate, and a Member of the House of Representatives, was convicted on the 30th August, 1983, by the Assize Court sitting at Larnaca on the following counts:

- (i) forgery contrary to sections 331 and 335 of the Criminal Code. Cap. 154; 25
- (ii) uttering a false document contrary to section 339 of the Criminal Code;
- (iii) forgery of official document contrary to sections 20, 331, 335 and 337 of the Criminal Code; and. 30
- (iv) uttering of the false document referred to in count (iii) above, contrary to sections 20, 331, 335 and 337 of the Criminal Code.

He was sentenced to one year's imprisonment on each of the four counts, the sentences to run concurrently. 35

In view of the nature of the offences, being offences of dishonesty and moral turpitude, as well as the sentence of imprison-

ment passed, and in view of the provisions of Articles 83, 71 and 64 of the Constitution, the question arose before the Assize Court whether the seat of the accused in the House of Representatives became vacant upon his conviction or whether he was still considered as a Member of the House and leave of the High Court (now the Supreme Court), for his imprisonment was required.

Articles 83, 71 and 64 read as follows:

10 "83.1 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.

15 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
20 of the prosecution or detention so long as he continues to be a Representative.

25 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.

30 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.

71. The seat of a Representative shall become vacant -
 (a) upon his death;
 (b) upon his written resignation;
 35 (c) upon the occurrence of any of the circumstances referred to in paragraph (c) or (d) of Article 64 or if he ceases to be a citizen of the Republic;

(d) upon his becoming the holder of an office mentioned in Article 70

64 A person shall be qualified to be a candidate for election as a Representative if at the time of the election that person -

(a) is a citizen of the Republic;

(b) has attained the age of twenty-five years;

(c) has not been, on or after the date of the coming into operation of this Constitution, convicted of an offence involving dishonesty or moral turpitude or is not under any disqualification imposed by a competent court for any electoral offence;

(d) is not suffering from a mental disease incapacitating such person from acting as a Representative."

The Assize Court after hearing arguments of counsel appearing in the case issued the following decision:

"Μετά την καταδίκη του κατηγορουμένου σε φυλάκιση, μας άπασχόλησε το εξής ζήτημα είναι συνταγματικά έπιτρεπτό να υπογραφεί το ένταλμα για την μεταφορά και εγκλεισμό του καταδικασθέντος στη φυλακή εν όψει του ότι πρόκειται για καταδίκη βουλευτή;

Το άρθρο 83 4 του Συντάγματος αφήνει να νοηθεί καθαρά ότι χρειάζεται άδεια του Ανωτάτου Δικαστηρίου για την εκτέλεση ποινής φυλάκισης σε μέλος της Βουλής των Αντιπροσώπων. Από τον συνδυασμό των άρθρων 71(γ) και 64(γ) του Συντάγματος προκύπτει ότι η έδρα βουλευτή κενούται αν μεταξύ άλλων καταδικασθεί για αδίκημα που εμπεριέχει το στοιχείο της ανεντιμότητας ή ηθικής αισχροτητας.

Αφού μελετήσαμε το θέμα, καταλήξαμε στην άποψη ότι δεν έχουμε αρμοδιότητα να αποφασίσουμε κατά πόσο η βουλευτική έδρα του καταδικασθέντος έχει κενωθεί αυτόματα με την καταδίκη του οπότε δεν θα ετίθετο θέμα εξασφάλισης της άδειας του Ανωτάτου Δικαστηρίου για την εκτέλεση της ποινής του.

Για να λεχθεί ότι έχει κενωθεί ή βουλευτική έδρα του καταδικασθέντος θα πρέπει πρώτα αν μη τι άλλο να αποφασισθεί

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ότι συντρέχουν οι προϋποθέσεις που θέτει το άρθρο 64(γ). Πέρα από αυτό θα μπορούσε να εγερθεί το ερώτημα κατά πόσο έστω και αν υπήρχαν οι προϋποθέσεις του άρθρου 64(γ) θα απαιτείτο κάποια επιβεβαιωτική πράξη αρμόδιου σώματος αναφορικά με την κένωση της βουλευτικής έδρας. Αν αποφασίζαμε εμείς το σημείο αυτό σήμερα στην πραγματικότητα με αφορμή το θέμα της υπογραφής η μη εντάλματος για την φυλάκιση, θα αποφασίζαμε το status του βουλευτή και κατ' επέκταση το θέμα της σύνθεσης του Νομοθετικού Σώματος της Δημοκρατίας.

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Το Κακουργιοδικείο μπορεί όπως και κάθε πρωτόδικο Δικαστήριο να εξετάζει και να αποφασίζει πάνω σε συνταγματικά θέματα η επίλυση των οποίων είναι αναγκαία για την εκδίκαση μιας υπόθεσης. Είμαστε όμως της γνώμης ότι το γενικότερο θέμα της σύνθεσης της Βουλής των Αντιπροσώπων δεν είναι θέμα που μπορεί να αποφασισθεί από το Κακουργιοδικείο.

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Οι σκέψεις αυτές μας οδηγούν στο συμπέρασμα ότι ενώ θα πρέπει να εκδοθεί ένταλμα θα πρέπει ταυτόχρονα να ενσωματώνει την πιο πάνω θέση μας. Έπειτα από αρκετό προβληματισμό, καταλήξαμε ότι πρέπει να εκδοθεί το ένταλμα κάτω από την επιφύλαξη της εφαρμογής των προνοιών του Συντάγματος.

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Έχουμε επίγνωση της ανάγκης για σαφήνεια στα εντάλματα. Εγείρεται όμως εξ αντικειμένου ένα συνταγματικό θέμα που κρίνουμε ότι δεν δικαιούμαστε να αποφασίσουμε

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Οι αξιωματούχοι στους οποίους απευθύνεται το ένταλμα θα πρέπει να πάρουν θέση και να ενεργήσουν ανάλογα".

("After sentencing the accused to imprisonment the following matter has given us concern: is it constitutionally permissible for the signing of the warrant for the transportation and confinement of the accused in prison in view of the fact that it concerns the conviction of a member of the House of Representatives?

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Article 83.4 of the Constitution implies clearly that the leave of the Supreme Court is required for the execution of a sentence of imprisonment on a member of the House of Representatives. From the combination of Articles 71(c) and

64(c) of the Constitution it emerges that the seat of a member of the House of Representatives becomes vacant if among others he is convicted for an offence which involves the element of dishonesty or moral turpitude.

After considering the matter, we reached the view that we have no competence to decide whether the seat of the convicted in the House of Representatives has become vacant automatically with his conviction and therefore the matter of securing the leave of the Supreme Court for the execution of his sentence would not have been raised. 5 10

In order to say that the seat of the convicted in the House of Representatives it must first of all, if nothing else be decided that there exist the prerequisites set out in Article 64(c). In addition to that there could be raised the question whether even if there existed the prerequisites of Article 64(c) there would be necessary some confirmatory act of an appropriate organ regarding the vacancy of the seat. If we decided this point today in fact by reason of the signing of the warrant for imprisonment, we would have decided the status of the member of the House of Representatives and by the matter of the composition of the Legislative Body of the Republic. 15 20

The Assize Court can, as every first instance Court, examine and decide on Constitutional matters whose solution is necessary for the trial of a case. But we are of the view that the more general matter of the composition of the House of Representatives is not a matter that can be decided by an Assize Court. 25

These thoughts lead us to the conclusion that while the warrant must be issued, it must also embody our above stand. After much thinking we decided that the warrant must be issued under the proviso of the enforcement of the provisions of the Constitution. 30

We are conscious of the need for clarity in the warrant. But there arises in fact a constitutional matter which we think we have no right to decide. 35

The officials to whom the warrant is addressed must take a stand in the matter and act accordingly").

The Assize Court then proceeded and signed the relevant warrant of commitment to prison commanding the Divisional Police Commander of Larnaca and all other Police Officers in Cypus "subject to the provisions of the Constitution", to take
 5 Georghios Afxentiou Georghiou of Larnaca, who was convicted of the offences referred to earlier in this judgment, and convey him to the prison at Nicosia and there deliver him to the officer in charge thereof.

In view of the above decision and the qualification "subject
 10 to the provisions of the Constitution" inserted by the Assize Court in the said warrant the present application was filed on behalf of the Attorney-General of the Republic by the Deputy Attorney-General claiming—

- 15 (1) A decision that the conviction of the respondent Member of the House of Representatives, Mr. Georghios Afxentiou Georghiou, for the offences of forgery and uttering false documents provided by sections 331, 335, 337 and 339 of the Criminal Code, Cap. 154, according to the decision of the Assize Court of Larnaca of
 20 the 30th August, 1983, caused automatically the loss of the representative capacity of the respondent from the time of his conviction so as to be possible and imperative the immediate execution of the sentence of imprisonment on him by the Assize Court of Larnaca; and
- 25 (2) In case where the Supreme Court decides that the said conviction did not have as a result the loss of the representative capacity of the respondent, an application is submitted, for leave for the execution of the sentence of imprisonment which was imposed by the Assize Court
 30 as regards the said conviction.

The basic question that falls for consideration in the present proceedings is whether the respondent is or is not a Member of the House of Representatives taking into consideration his conviction by the Assize Court in view of the provisions of
 35 Articles 71(c) and 64(c) of the Constitution.

There can be no doubt that the offences for which the respondent was convicted involve dishonesty and moral turpitude. This was certified by this Court when granting leave for the

prosecution of the respondent in the case of *In Re Georghiou* (1983) 2 C.L.R. page 1.

To my mind the provisions of Article 71(c) and 64(c) of the Constitution are clear and unambiguous. As soon as the respondent was convicted by the competent Court his seat in the House of Representatives should be considered as vacated. It makes no difference that the respondent has filed an appeal against his conviction in the meantime. His privilege for special treatment under Article 83.2 of the Constitution comes to an end and from that time onwards he should be treated like any other citizen of the Republic who finds himself in the same situation.

My above view finds support in the majority judgment in a similar case, that of *Lefkios Chr. Rodosthenous v. The Republic*, 1961 C.L.R. 382.

It follows from the above that the application under consideration, in its present form, which is based on Article 83.2 of the Constitution, cannot be entertained as the seat of the person concerned became vacant upon his conviction by the competent Court.

The net result of my decision is that the warrant of commitment to prison of the respondent ought to have been executed forthwith, immediately after it was signed.

TRIANAFYLLIDES P.: The respondent has been convicted by an Assize Court in Larnaca of offences of forging and uttering forged documents and sentenced to one year's imprisonment and now the applicant Attorney-General seeks a declaration that the respondent has, by virtue of Article 71(c) of the Constitution, ceased to be a Representative (that is a Member of the House of Representatives); or, alternatively, if the respondent is found to be still a Representative, then the leave of this Court is sought, under Article 83.2 of the Constitution, for the enforcement of the sentence of imprisonment that was passed upon the respondent.

In my opinion, this Court has jurisdiction to deal with the present application under Article 149(b) of the Constitution because there has arisen, due to certain observations of the Assize Court after the delivery of its judgment and due, too,

to differences of views of the parties to the present proceedings, an ambiguity regarding the interpretation and application of Articles 64(c) and 71(c) of the Constitution which is an "ambiguity" in the sense of Article 149(b), as it was construed in, inter alia, the judgment in the case of the *The Cyprus Grain Commission v. The New Vatyli Co-Operative Credit Society*, 4 R.S.C.C. 91, 92-93.

Also, this Court has jurisdiction to entertain the present application under Article 83.2 of the Constitution inasmuch as the respondent has, while being a Representative, been sentenced to imprisonment and such sentence cannot be executed without the leave of this Court under the said Article 83.2, if it is found that he is still a Representative.

In view of what has been described as the "majority view" in the case of *Rodosthenous v. The Republic*, 1961 C.L.R. 382, 392, it has been argued that the respondent has automatically ceased to be a Representative upon his conviction by the Assize Court, as aforesaid, of offences involving dishonesty and moral turpitude (see, in this respect, *In re Georghiou*, (1983) 2 C.L.R. 1, 15).

The aforementioned "majority view" in the *Rodosthenous* case, supra, is not set out wholly in considered judgments but it is, in part, the record of a discussion in Court between Judges and counsel. I do not think it can be treated as creating a really binding precedent, especially as the, at that time, High Court of Justice had no competence to interpret the Constitution, as such competence was vested conclusively, under Article 149(b) of the Constitution in the, at that time, Supreme Constitutional Court, which had, also, exclusive jurisdiction, under Article 85 of the Constitution, to decide "finally" whether or not Rodosthenous had, upon his conviction, ceased to be a Representative.

In any event, the substance of the "majority view" in the *Rodosthenous* case was that the High Court of Justice appeared to have been of the view that, before exercising its jurisdiction on appeal in respect of leave granted under Article 83 of the Constitution, it had to be satisfied that Rodosthenous was still a Representative and as such proof was not adduced the High

Court in the end dismissed the case and decided only about the question of its costs.

Assuming, however, that the *Rodosthenous* case could, conceivably, be regarded as a binding precedent it should be treated as being clearly distinguishable from the present case because in the *Rodosthenous* case no appeal was filed against his conviction by the Representative concerned whereas in the present case an appeal has been filed against his conviction by the respondent Representative and it is still pending.

The filing of the said appeal is of decisive importance regarding the outcome of the application of the Attorney-General which is being determined today, because, in my opinion, the word "convicted" in Article 64(c) of the Constitution and, consequently, also, in relation to the provisions of Article 71(c) of the Constitution, means convicted in a final manner; and, once an appeal has been filed it means only a conviction which has become final as a result of the dismissal of the appeal which was made against it.

Articles 64 and 71 of the Constitution read as follows:

"ARTICLE 64

A person shall be qualified to be a candidate for election as a Representative if at the time of the election that person—

- (a) is a citizen of the Republic;
- (b) has attained the age of twenty-five years;
- (c) has not been, on or after the date of the coming into operation of this Constitution, convicted of an offence involving dishonesty or moral turpitude or is not under any disqualification imposed by a competent Court for any electoral offence;
- (d) is not suffering from a mental disease incapacitating such person from acting as a Representative.

ARTICLE 71

The seat of a Representative shall become vacant—

- (a) upon his death;
- (b) upon his written resignation;

(c) upon the occurrence of any of the circumstances referred to in paragraph (c) or (d) of Article 64 or if he ceases to be a citizen of the Republic;

5 (d) upon his becoming the holder of an office mentioned in Article 70".

What is the correct meaning of the word "convicted" in Article 64(c) is not to be determined on the basis of the relevant provisions of the Criminal Procedure Law, Cap. 155; because the Constitution cannot be construed by reference to statutory provisions subsidiary to it. Such meaning is to be found in the light of the correct interpretation of Articles 64(c) and 71(c) of Constitution, as well as of the Constitution as a whole.

It must be borne in mind that even though it was initially held that Articles 30 and 155 of our Constitution, as well as Article 6 of the European Convention on Human Rights, do not create a right to the availability of a remedy by way of appeal, the existence of such remedy in criminal cases has been rendered mandatory ever since the Republic of Cyprus has ratified, by means of the International Covenants (Economic, Social and Cultural Rights and Civil and Political Rights) (Ratification) Law, 1969 (Law 14/69), the United Nations International Covenant on Civil and Political Rights, Article 14(5) of which provides that "Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law"; and as regards the effect of the ratification of the said Covenant, as well as of the United Nations International Covenant on Economic, Social and Cultural Rights, which was also ratified by Law 14/69, in relation to the application of relevant constitutional provisions in Cyprus, useful reference may be made to the case of *Ioannides v. The Republic*, (1979) 3 C.L.R. 295, 304, 305, 306; 334; 335; 338, 339.

It would not be really permissible to construe the word "convicted" in Article 64(c) of the Constitution in a manner inconsistent with the mandatory international obligation of the Republic of Cyprus under the aforementioned Article 14(5) of the United Nations International Covenant on Civil and Political Rights; and, in this respect, there must not ever be lost sight of that the Constitution has to be construed and applied not merely as a static dry legislative text but as a living entity adaptable to present-day needs and realities.

Moreover, if the word "convicted" in Article 64(c), and, consequently, for the purposes of Article 71(c), too, is not construed as envisaging only a conviction which has been upheld on appeal, in case an appeal has been made against it, there cannot be avoided unreasonable consequences when the said Articles are applied within the framework of the Constitution as a whole: Thus, if upon conviction of a Representative for a crime involving dishonesty or moral turpitude he forfeited at once his seat, notwithstanding the fact that he has appealed against his conviction and his appeal is still pending, his vacant seat in the House of Representatives would, normally,—(prior to the enactment of the Filling of a Vacant Seat of a Representative (Temporary Provisions) Law, 1983 (Law 55/83), which is of temporary duration)—have to be filled, under Article 66.2, by a by-election on a date fixed by the House of Representatives within a period not exceeding forty-five days from his conviction; and if, for any unforeseeable reason, the appeal could not, eventually, be determined within the aforesaid period of forty-five days—even though, of course, it would normally have to be dealt with as expeditiously as possible)—then the by-election would have to take place and a new Representative would be elected, and he would take his seat in the House of Representatives, subject to the outcome of the appeal of the convicted Representative; and if such appeal was in the end successful then the new Representative would have to leave the seat in question, to which would return its acquitted previous holder. Such developments, however, are neither reasonable, nor envisaged and possible under our Constitution.

It cannot be correct an interpretation of a provision of the Constitution, such as Article 64(c), if it results in the citizens having to exercise sometimes their sovereign will, for the purpose of electing a new Representative, knowing that they may be doing so in vain because the appeal of the Representative, whose seat was vacated on his conviction by a trial Court, may be allowed.

Similar incongruous results of construing "convicted" in Article 64(c) of the Constitution as meaning "convicted" only by a trial Court, irrespective of the outcome of the appeal of the Representative concerned against his conviction, would follow in relation to the application of provisions in our Consti-

tution such as those made by Article 72.2, regarding the filling of a vacancy in the office of the President or Vice-President of the House of Representatives, and by Article 73, regarding party political groups in the House of Representatives.

- 5 I appreciate that if the word "convicted" in Article 64(c) is to be interpreted as meaning, for the purposes of the correct application of Article 71(c), "convicted finally after the dismissal of the appeal, if an appeal has been made", the same interpretation must be given to the word "convicted" in Article 64(c)
- 10 in relation to the question of whether a person is qualified to be a candidate in a parliamentary election. This, however, would not, in my opinion, create any problem which cannot be adequately met by appropriate provisions in the electoral legislation.
- 15 On the basis of the view, which I have already expounded in this judgment, regarding the meaning of the word "convicted" in Article 64(c), I am, indeed, of the opinion that it is clear that in the present instance the respondent is still a Representative and, so, this Court has competence under Article 83.2 to decide
- 20 whether or not he should start serving the one year's sentence of imprisonment which was imposed on him, in the same way as this Court would have had competence to decide whether he should have started serving a sentence of imprisonment if he had not been convicted of offences involving dishonesty and
- 25 moral turpitude but of an offence of another kind which was serious enough to warrant sending him to prison; and in which case it could not have been said that by the combined effect of Articles 64(c) and 71(c) of the Constitution he had lost his seat in the House of Representatives.
- 30 Assuming, however, that I am wrong as regards the meaning of the word "convicted" in Article 64(c), I still cannot agree that in the present instance the respondent has ceased, by virtue of Article 71(c) of the Constitution to be a Representative as soon as he has been convicted of offences involving dishonesty
- 35 and moral turpitude, and that, therefore, this Court has no competence to decide under Article 83.2 of the Constitution whether or not he should start serving his sentence of imprisonment.

In my opinion the seat of a Representative does not become

automatically vacant upon the happening of any one of the events envisaged by Article 71 of the Constitution, because before the seat of a Representative can be treated as vacant by virtue of Article 71 the happening of the particular event entailing such a result must be formally established by the House of Representatives, in which there is primarily vested the power and the duty to ensure that, at all times, its composition is constitutionally valid. 5

In the present instance the House of Representatives would, in due course, have to officially note the conviction and sentence passed upon the respondent for offences involving dishonesty and moral turpitude and decide finally that his seat has been vacated; and in case this was disputed then the competent organ to pronounce "finally" upon this matter would be this Court, acting as Supreme Constitutional Court, in view of its clearly implied powers, in this respect, under Article 85 of the Constitution. 10 15

I think that it is useful to point out, at this stage, that there may be instances in which this Court does not possess jurisdiction under any Article of the Constitution, such as Article 85, to pronounce on whether the seat of a Representative has become vacant by virtue of Article 71; and it should be stressed that this Court has no inherent competence to deal with any constitutional matter judicially unless such competence has been given to it either expressly or by necessary implication. Thus, in the present instance if the respondent had been sentenced to pay a fine and he had insisted on continuing to act as a Representative the only organ which could, after the dismissal of his appeal against his conviction, have excluded him from the House of Representatives on the ground that he had been convicted of offences involving dishonesty and moral turpitude would have been the House of Representatives; and in case he disputed the validity of the decision in this respect of the House of Representatives then the matter would have to be brought before this Court, not under Article 83 of the Constitution, but under Article 85, or even under Article 140 or under Article 149(b) of the Constitution. 20 25 30 35

In the light of the foregoing I am of the view that, not only because the appeal of the respondent against his conviction

has not been determined yet, but, also, since we have not before us a formal decision, emanating from the House of Representatives, that the respondent is being treated as having lost his seat due to his conviction of offences of dishonesty and moral turpitude, he continues to be a Representative for the purposes of the exercise by this Court of its relevant powers under Article 83.2, in deciding whether or not he should start serving, pending the determination of his appeal, the sentence of imprisonment that was passed upon him.

I would, also, proceed to add that, as at present advised, I think that in view of the nature of the offences of which the respondent has been convicted he should start serving his sentence pending the determination of his appeal and this Court should grant leave under Article 83.2 of the Constitution for this purpose.

The House of Representatives, has, of course, competence, under Article 73.1 of the Constitution, to regulate its procedure in such a manner as to exclude the respondent from, in any way, participating in its proceedings while he is in prison and while his appeal is pending; in the same manner as the respondent could have been excluded from participating in the proceedings of the House of Representatives, pending the determination of his appeal, if he had not been sentenced to imprisonment but if he had only been fined in respect of the offences of which he has been convicted.

LORIS J.: The present application which was filed on behalf of the Attorney-General of the Republic prays for:

- (1) A declaration to the effect that the conviction of the respondent, a member of the House of Representatives, by the Assize Court of Larnaca on 30.8.1983 (in Larnaca Criminal Case No. 2855/83) entailed automatically the loss of his office as a member of the House of Representatives, so that the immediate enforcement of the warrant of imprisonment could be made possible
- (2) In the alternative, in case this Court finds that the conviction of the respondent by the Assize Court did not entail the loss of his office, leave of this Court to enforce the warrant of imprisonment according to the sentence im-

posed by the Assize Court in connection with the aforesaid conviction.

As stated in the application same is based "on Articles 64, 71, 83 and 149 of the Constitution, as well as in the inherent powers of the Supreme Court".

5

The facts relied upon in support of the application are stated to be the following:

- (i) The respondent, a member of the House of Representatives for Larnaca District was convicted on the 30th August, 1983, by the Assize Court of Larnaca, of offences of Forgery (two counts) contrary to sections 331 and 335 of the Criminal Code and uttering the forged documents in question (two counts) contrary to sections 339, 335 and 337 of the Criminal Code, and was sentenced to concurrent terms of one year's imprisonment. 10 15
- (ii) Following the aforesaid sentence, the submissions as to its enforceability and a Ruling on this issue, the Assize Court issued a warrant of imprisonment of the respondent dated 30th August 1983 indorsed with the words "Subject to the provisions of the Constitution". 20

The respondent filed an opposition to the above application on 5.9.1983 maintaining inter alia that the present application is premature in view of the fact that the judgment of the Assize Court dated 30.8.1983 is not final and conclusive owing to the fact that an appeal against it was filed on 31.8.1983. 25

The first question which falls for determination is whether we can entertain the present application:

Having given the matter very careful consideration I hold the view that this Court has jurisdiction to entertain the present application in view of the conflicting submissions advanced after sentence before the Assize Court, the relevant ruling of same and the provisions of Article 149(b) of the Constitution coupled with the decision of the then Supreme Constitutional Court in the case of *Cyprus Grain Commission and the New Vatyli Co-operative Credit Society*, 4 R.S.C.C. 91. 30 35

I shall now proceed to examine the gist of the present application; our task in this respect is limited to the construction of

the word "convicted" which is met in para. (c) of Article 64 of the Constitution. Article 64 of the Constitution deals with the qualifications entitling a citizen of the Republic of Cyprus to stand as a candidate for an election in the House of Representatives whilst Article 71 provides for the forfeiture of a seat by a Representative; both Articles read as follows:

- 5 "64. A person shall be qualified to be a candidate for election as a Representative if at the time of the election that person—
- 10 (a) is a citizen of the Republic;
- (b) has attained the age of twenty-five years;
- (c) has not been, on or after the date of the coming into operation of this Constitution, convicted of an offence involving dishonesty or moral turpitude or is not under
- 15 any disqualification imposed by a competent Court for any electoral offence;
- (d) is not suffering from a mental disease incapacitating such person from acting as a Representative".
- "71. The seat of a Representative shall become vacant—
- 20 (a) upon his death;
- (b) upon his written resignation;
- (c) upon the occurrence of any of the circumstances referred to in paragraph (c) or (d) of Article 64 or if he ceases to be a citizen of the Republic;
- 25 (d) upon his becoming the holder of an office mentioned in Article 70".

It is evident that if the word "convicted" is construed as indicating "conviction" by a Court of first instance, in the case in hand the Assize Court of Larnaca, the respondent should

30 be imprisoned forthwith and his seat in the House vacated, due to the fact that this Court in granting leave to prosecute, relying on the same summary of the facts and identical charges as those on which the respondent was convicted by the Assize Court, characterised the offences in question as involving dishonesty and moral turpitude (vide *In Re Georghiou* (1983)

35 2 C.L.R. 1).

If on the other hand the word "convicted" is construed to mean "convicted in the first instance and sustained on appeal" then the respondent would not be imprisoned forthwith nor his seat in the House of Representatives would become vacant upon conviction by the Court of first instance pending his appeal. 5

It is true that our Constitution did not safeguard a right of appeal; but as the learned President of this Court remarked the Constitution has to be construed, bearing in mind at all material times, that it is not merely a static dry legislative text but a living entity. 10

Thus independently of the unqualified right of appeal against conviction conferred by Statute (vide s. 25(2) of Law 14/60) the existence of such a right has been greatly emphasized ever since the Republic of Cyprus ratified, by means of Law 14/69 (a Law having superior force than any Municipal Law pursuant to the provisions of Article 169(3) of the Constitution) the United Nations International Covenant on Civil and Political Rights, Article 14(5) of which provides that "anyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to Law". 15 20

Although the Constitution is a document sui generis and "the interpretation of constitutional provisions need not necessarily follow the pattern of construction of municipal legislation, although the traditional interpretation of statutes and rules relevant thereto is nowadays of lesser consequence in view of emphasis being laid on the teleological interpretation of every kind of legislation". (*Police v. Georghiades* (1983) 2 C.L.R. 33 at p. 51) yet even in municipal statutes there are occasions where a Court may depart from the plain words of a statute; the Law on the subject was authoritatively stated by Lord Simon of Glaisdale in *Stock v. Frank Jones (Tipton) Ltd.*, [1978] 1 All E.R. 948 (H.L.) at p. 954 as follows: 25 30

"...A Court would only be justified in departing from the plain words of the Statute were it satisfied that

- (1) there is clear and gross balance of anomaly; 35
- (2) parliament, the legislative promoters and the draftsman, could not have envisaged such anomaly and could not

have been prepared to accept it in the interest of a supervening legislative objective;

- (3) the anomaly can be obviated without detriment to such legislative objective;
- 5 (4) the language of the statute is susceptible of the modification required to obviate the anomaly".

In the case in hand if we construe the word "convicted" which occurs in para. (c) of Article 64 of the Constitution to mean "convicted by a Court of first instance despite a pending appeal against conviction" a member of the House of Representatives will be forfeiting his seat in the House, a by-election will be held pursuant to the provisions of Article 66.2 of the Constitution, another candidate will eventually occupy the vacant seat and if the member unseated is successful in his appeal he would not be able to regain his seat as nowhere in the Constitution such a provision exists either for the reseating of the unseated member of the House or for the unseating of the member who was elected in the post vacated under the circumstances aforesaid.

20 But it is not only the member of the House who will be unseated who will be prejudicially affected; the political party to which he belongs will also suffer for no obvious reason. Thus Article 73.12 of the Constitution provides as follows:

25 "Any political party which is represented at least by twelve per centum of the total number of the Representatives in the House of Representatives can form and shall be entitled to be recognised as a Political party group".

Supposing that the unseating of a member of the House (convicted in the first instance only with a pending appeal) who belongs to a political party recognised as "a political party group", results in the fall of his party below the percentage required by Article 73.12 of the Constitution and the resulting by-election is contested unsuccessfully, by the said political party would it be fair that the said political party should cease to be recognised as having "a political party group" in the House in spite of the fact the unseated member's conviction was quashed on appeal?

I feel that I should state here that the hearing of the appeal

as expeditiously as possible will not remedy the anomaly which will result from such construction of the word "convicted" because we cannot fetter the hands of the Court of Appeal to sustain or quash the conviction; they may, as they are perfectly entitled to do, order a re-trial; and the outcome of such re-trial may be the object of a fresh appeal. 5

It is abundantly clear from what I have stated above that if we construe the word "convicted", however plain same may be to our comprehension, as meaning "convicted" by a Court of first instance in spite of a pending appeal, we shall be confronted with gross balance of anomaly which will result in a chaotic situation which would have never been envisaged nor could have been accepted by the promoters and the draftsman of our Constitution. I hold the view that the anomaly can be obviated without detriment to the objective of Article 64 of the Constitution the language of which is susceptible of the modification required to obviate the anomaly. I have decided, therefore to construe the crucial word "convicted" which occurs in para (c) of Article 64 of our Constitution to mean "finally convicted" thus obviating the anomaly and the threatening chaos which will affect as indicated above not only the member of the House concerned, but also the political party to which he belongs and eventually the smooth functioning of the House of Representatives. 10 15 20

In so doing I am not altering the language of the Constitution which is susceptible to this minor modification required to obviate the anomaly. 25

In view of the above and in view of the fact that the appeal of the respondent is still pending I would dismiss the present application as premature. 30

STYLIANIDES J.: Georghios Afxentiou Georghiou, an advocate of Larnaca and a Member of the House of Representatives, was prosecuted with the leave of this Court under Article 83.2 of the Constitution—(See *In Re Georghiou*, (1983) 2 C.L.R. 1)—on two counts of forgery and two counts of uttering false documents. 35

He was tried by the Assize Court sitting at Larnaca, which found him guilty on all counts on the Information and passed

sentence of one year imprisonment on each of the four counts to run concurrently.

Mr. Loucaides submitted before the Assizes that the sentence of imprisonment was enforceable forthwith as by the verdict
5 of the trial Court the seat of Georghiou in the House of Representatives became vacant under the provisions of Art. 71(c) of the Constitution. Mr. Christofides for the accused submitted that the Assize Court lacked competence to pronounce on the forfeiture of a parliamentary seat as this was within the
10 exclusive jurisdiction of the Supreme Court. The trial Court expressed doubts as to their competence on the issue raised. They issued a warrant of imprisonment under the provisions of the Criminal Procedure Law but they inserted a jurat in the following words: "Subject to the provisions of the Constitu-
15 tion". The trial Court was confronted with an unprecedented problem which in the circumstances they abstained from solving.

On the following day—31st August, 1983—the present application was filed whereby a decision is sought that the conviction
20 of the respondent—Member of the House of Representatives of Larnaca, Georghios Afxentiou Georghiou— of the offences of forgery and uttering false documents, contrary to sections 331, 335, 337 and 339 of the Criminal Code, Cap. 154, by the Assize Court of Larnaca on 30.8.1983 entailed automatically
25 the loss of office and vacation of his seat, and the imprisonment imposed can be executed without leave. In the alternative leave of the Supreme Court is prayed for the execution of the sentence of imprisonment.

The application is based on the provisions of Articles 64, 71, 83 and 149 of the Constitution.

30 Rival submissions were made by Mr. Loucaides and Mr. Christofides on the following important constitutional issues:—

- (a) Competence;
- (b) The meaning of the word "καταδικασθῆι" in the context of Articles 64(c) and 71(c) of the Constitution; and,
35
- (c) Leave to execute the punishment of imprisonment forthwith.

A. COMPETENCE:

Mr. Loucaides submitted that this Court is vested with exclusive jurisdiction to deal with both alternative legs of the application whereas Mr. Christofides submitted that the vacancy of a seat in the House of Representatives is within the jurisdiction of the House of Representatives and he referred to an unpublished decision taken by the House of Representatives in the early days of the establishing of the Republic in 1961 by majority of votes in the case of *Rodosthenous*.

I need not delve into the contents of the speeches preceding that decision and the decision itself as an unpublished decision of the House is not a factor to be considered in determining the question posed.

This Court is vested with the jurisdiction and powers of the Supreme Constitutional Court and the High Court established under the Constitution. (See *Administration of Justice (Miscellaneous Provisions) Law, No. 33/64*; *The Attorney-General of the Republic v. Mustafa Ibrahim and Others*, 1964 C.L.R. 195).

This Court has exclusive jurisdiction to make, in case of ambiguity, any interpretation of the Constitution—(See Article 149(b)).

“Ambiguity” in the sense of paragraph (b) of Art. 149 was defined by the Supreme Constitutional Court in the case of *Cyprus Grain Commission etc. v. New Vatyli Co-operative Credit Society*, 4 R.S.C.C. 91, at pp. 92–93, thus:—

“If a party to litigation makes a submission concerning the meaning of a provision of the Constitution, applicable to or affecting such litigation, and if such submission is different from the view shared by the trial Court or any other party in the said litigation, or even if the trial Court takes a view concerning such meaning which is different from the view held by all the parties in such litigation, then the necessity arises for a decision on this difference of opinion concerning the meaning of the provision in question of the Constitution. In the opinion of the Court such difference of opinion, arising in the course of litigation, constitutes an ‘ambiguity’ in the sense of paragraph (b)

of Article 149—(vide also *The Republic and N.P. Loftis*,
1 R.S.C.C. p. 34)”.
5

It is not permissible to say that an ambiguity does not exist
on the ground that in the opinion of the Court the meaning
of the particular provision is clear, because this would amount
to resolving in a certain way the difference of opinion, i.e. the
ambiguity.

The Supreme Constitutional Court in virtue of Article 85
had exclusive jurisdiction to adjudicate on any question with
10 regard to the qualifications of candidates for elections of
Members of the House of Representatives. Such qualifications
are set out in Article 64 that reads as follows:—

“A person shall be qualified to be a candidate for election
as a Representative if at the time of the election that person—

- 15 (a) is a citizen of the Republic;
- (b) has attained the age of twenty-five years;
- (c) has not been, on or after the date of the coming into
operation of this Constitution, convicted of an offence
involving dishonesty or moral turpitude or is not
20 under any disqualification imposed by a competent
Court for any electoral offence;
- (d) is not suffering from a mental disease incapacitating
such person from acting as a Representative”.

Article 71 provides when the seat of a Representative shall
25 become vacant—

- (a) upon his death;
- (b) upon his written resignation;
- (c) upon the occurrence of any of the circumstances
referred to in paragraph (c) or (d) of Article 64 or if
30 he ceases to be a citizen of the Republic;
- (d) upon his becoming the holder of an office mentioned
in Article 70.

Article 85, read in conjunction with Articles 64 and 71(c),
confers competence on this Court to pronounce upon the

happening of an event leading to the vacation of the seat of a Representative.

A sentence of imprisonment imposed on a Representative cannot be executed, so long as he continues to be a Representative, without the leave of this Court under Art. 83.2 of the Constitution. 5

Having regard to the rival submissions of counsel, the prayer in the application and the relevant constitutional provisions, this Court is the only organ of the State that has competence to deal with the matters raised in the application. The whole structure of our Constitution points that its drafters intended to assign to the highest judiciary all matters relevant to the right of a person to occupy a seat in the House. The House of Representatives only notes the happening of an event leading to the vacation of the seat of one of its Members and thereupon it ensures that its composition is constitutionally valid. 10 15

*B. MEANING OF THE WORD "ΚΑΤΑΔΙΚΑΣΘΕΙ"—
"CONVICTED":*

The Constitution is not an ordinary statute. It must be construed to give effect to the intentions of those who made and agreed to it and those intentions are expressed in or to be deduced from the terms of the Constitution itself and not from any preconceived ideas as to what such a Constitution should or should not contain. (*Hinds v. The Queen*, [1976] 1 All E.R. 353). It must be construed as a living entity and not as a static legislation. 20 25

The seat of a Representative is vacated if he is convicted of an offence involving dishonesty or moral turpitude. The offences, of which the respondent was found guilty by the Assize Court of Larnaca, are undoubtedly offences involving dishonesty and moral turpitude. 30

In *Re Georghiou*, (1983) 2 C.L.R. 1, Triantafyllides, P., at p. 20 said:-

"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, 35

his seat in the House of Representatives would become vacant”.

A. Loizou, J., in the same case said at p. 24:—

5 “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
10 vacant”.

The question that arises is the meaning to be ascribed to the word “convicted”.

I consider the matter to be devoid of authority. *Lefkios Rodosthenous v. The Republic*, 1961 C.L.R. 382, is not an authority on the matter. The report depicts merely an impromptu discussion between Judges and counsel and it cannot be regarded as creating a binding precedent. Furthermore the proceedings were before the High Court which had no jurisdiction either to construe the Constitution or to pronounce on the provisions of Articles 64 or 71 of the Constitution. Its power was limited only to grant leave for enforcement of a sentence of imprisonment. Counsel were invited by the High Court, before exercising its such jurisdiction, to satisfy the Court that Rodosthenous was still a Member of the House of Representatives, and in
20 default of such proof it dismissed the appeal of Rodosthenous but dealt extensively with the question of costs. The sententious statements of the majority of the judges could not form a judicial precedent.

Rodosthenous case is further distinguishable from the present
30 case. Rodosthenous was convicted by an Assize Court sitting at Nicosia. No appeal was filed against his conviction. At the time his appeal for execution of the sentence of imprisonment was taken up by the High Court, no appeal was pending and the period of appeal had already expired.

35 Neither the Constitution nor the Courts of Justice Law, No. 14/60, nor the Criminal Procedure Law, Cap. 155, safeguard the right of appeal of a person found guilty by the trial Court. Article 6 of the European Convention for the Protection of

Human Rights and Fundamental Freedoms, ratified by Law of the Republic No. 39/62, does not compel States to institute a system of appeal Courts. A State which does set up such a Court consequently goes beyond its obligations under Article 6—(*Belgian Linguistic Cases*, 11 Yearbook of the European Convention on Human Rights, (1968) 832, at p. 864). Contracting States are not obliged to grant persons who have been sentenced the right to appeal for a review of criminal sentences which have acquired the force of *res judicata*. Nevertheless, it might be thought that where such a right exists, the procedure in the case should be subject to the provisions of Article 6. The procedure for review, which was provided in Austria under Article 353(2) of the Code of Penal Procedure does not come within the scope of Article 6 of the Convention because at the time such proceedings are instituted, the person concerned is no longer an accused within the meaning of Article 6—(*X. v. Austria*, Application No. 1237/61, 5 Yearbook of the European Convention on Human Rights, 96, p. 100).

In this country the Supreme Court in a series of decisions established that there was only a limited right of appeal subject to the provisions of the Criminal Procedure Law, and that a right of appeal exists only where it is expressly conferred either by the provisions of the Criminal Procedure Law, Cap. 155, or by the provisions of s.25(2) of the Courts of Justice Law, No. 14/60—(*Rodosthenous and Another v. The Police*, 1961 C.L.R. 48; *Evangelos Christofi v. The Police*, (1970) 2 C.L.R. 117; *Georghadji and Another v. The Republic*, (1971) 2 C.L.R. 229; *The Attorney-General of the Republic v. Andreas Pouris and 6 Others*, (1979) 2 C.L.R. 15).

In *Georghadjis* case reference was made to Article 30 of the Constitution, Article 6(1) of the European Convention on Human Rights and the decision of the European Court of Human Rights in the Case "Relating to certain aspects of the laws on the use of languages in education in Belgium", and adopted the latter's decision that States are not compelled to institute a system of appeal Courts in criminal cases.

The International Covenant on Civil and Political Rights adopted by the United Nations' General Assembly on 16th December, 1966, was ratified by this country on 28.2.1969

by Law No. 14/69 and came into force on 23rd March, 1976, after the deposit with the Secretary-General of the United Nations of the 35th instrument of ratification as provided in Article 49 thereof. This International Covenant, having been
5 ratified under Article 169 of our Constitution, has superior force to the municipal law.

Article 14(5) of the Covenant provides:-

“Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal
10 according to law”.

This provision confers unequivocally and safeguards a right of appeal against a conviction and sentence to every person in this country.

This provision was considered by the Human Rights Committee of the United Nations in the case of *Consuelo Salgar de Montejo v. The State of Columbia*. The Committee in its decision delivered on 24.3.82 considered that the expression
15 “according to law” in Article 14(5) of the Covenant is not intended to leave the very existence of the right of review to the discretion of the States parties, since the rights are those
20 recognized by the Covenant, and not merely those recognized by domestic law. Rather, what is to be determined “according to law” is the modalities by which the review by a higher tribunal is to be carried out.

25 In the case of *Larry James Pinkney v. Canada* the Committee held that the delay for 34 months by the Canadian authorities to produce the transcripts of the trial for the purpose of the appeal was incompatible with the right safeguarded under Articles 14(3)(c) and 5 of the Covenant.

30 In view of Article 14(5) of the International Covenant on Civil and Political Rights, which is operative in Cyprus with superior force to any municipal law, the only reasonable construction of the term “conviction” in the case of a person found
35 guilty by a first instance Court, who files an appeal, which is still pending, is the confirmation of his guilt by the reviewing Court—the Appeal Court.

When a seat is vacated, a Representative is finally unseated. There is no provision in the Constitution for a Representative,

unseated from the House on the ground of conviction of an offence of dishonesty or moral turpitude, to revert to the House if acquitted by the Appeal Court. A narrow interpretation of the term "convicted", confining conviction to the first instance Court, where an appeal was filed, would be unreasonable and would lead to absurdity. Though appeals must be heard as expeditiously as possible, we would again—if a narrow interpretation to the term "convicted" is given—be faced with a further absurdity: A by-election shall be held within a period not exceeding 45 days of the occurrence of the vacancy, under Art. 66.2 of the Constitution, for the filling of the vacancy. The successful candidate in the by-election will take his seat in the House. If the unseated Representative is successful before the Appeal Court, either by acquittal or by an order for retrial, the by-elections would be in vain. There is no provision in the Constitution and no machinery for expelling one of the two—the unseated Member and the newly elected Member—from the House. This would be a monstrous situation.

This could not have been the intention of the drafters of the Constitution. When they made the highest judiciary the interpreters of the Constitution and the arbiters of its application, they definitely expected that the judiciary would interpret the Constitution in such a way as to give efficacy to it and smooth parliamentary life to the people of the country.

"Conviction" in the sense of Articles 64 and 71 of the Constitution is a final conviction. A conviction does not become final and does not acquire the force of *res judicata* until it is affirmed on appeal or the time of appeal has expired. A person convicted by a first instance Court, pending his appeal, is still a person "charged with a criminal offence". This reasoning may not strictly apply under the English Criminal Law but is clear that in a number of continental countries this is law. The Constitution is not to be interpreted having regard to the Criminal Procedure or the Criminal Law but, on the contrary, the laws have to be construed subject to the Constitution.

The opinions of the Commission and the decisions of the European Court of Human Rights lend support to this interpretation.

In *Delcourt* case, 13 Yearbook, p. 1100, at p. 1120, we read:—

"Thus, a criminal charge is not really 'determined' as

5 long as the verdict of acquittal or conviction has not become final. Criminal proceedings form an entity and must, in the ordinary way terminate in an enforceable decision. Proceedings in cassation are one special stage of the criminal proceedings and their consequences may prove decisive for the accused.

10 Article 6(1) of the Convention does not, it is true, compel the Contracting States to set up Courts of appeal or of cassation. The judgment of the Court of Appeal may depend in different degrees on the position of the person concerned. He loses his status of a 'convicted' person when a decision is quashed".

15 The respondent appealed against his conviction and sentence by the Assize Court of Larnaca. His appeal is pending. We cannot prejudge the outcome of the appeal. His conviction may be quashed or a retrial may be ordered or it may be confirmed.

20 For the foregoing and in view of the pendency of his appeal against conviction, I am firmly of the view that, for the purpose of Articles 64(c) and 71(c), he has not yet been convicted and, therefore, his seat in the House has not become vacant; he continues to be a Member of the House until final conviction by the Court of Appeal.

C. LEAVE FOR IMPRISONMENT:

25 An appeal does not suspend the execution of the sentence of imprisonment. Leave, however, of this Court is required for the imprisonment of a Representative.

30 Having regard to the offences, the nature thereof and the period of imprisonment imposed by the trial Court, I would have granted leave, under Article 83.2 of the Constitution, for the imprisonment of the respondent forthwith but, as the majority of this Court decided that the respondent is no more a Member of the House, I need not do so.

35 TRIANTAFYLLIDES P.: The outcome of the present application is that which is stated in the judgments delivered by the majority of the Court.

Order accordingly.