

[TRIANTAFYLIDIS, J.]

IN THE MATTER OF ARTICLE 146 OF THE
CONSTITUTION

KYRIACOS SYGHARIOTIS AND OTHERS,

Applicants,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE DENTAL COUNCIL (AN INDEPENDENT
BODY),

Respondent.

(Cases 55/63-60/63—Consolidated)

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Administrative Law—Dental Assistants—The Dentists Registration Law, Cap. 249 as amended by the Dentists Registration (Amendment) Law, 1962, (Law 76 of 1962), and in particular by sections 3 and 5—Decisions of the Dental Council refusing to permit Applicants to continue to carry out the duties of a dental assistant—Annulled, as having been taken by a defectively composed collective organ, because of the participation, at the material time, of two members who were disqualified from doing so.

Collective organs—Defective composition of collective organs through the participation of a disqualified member.

Observations of the Court for the guidance of the Dental Council.

All Applicants in the present consolidated cases apply for the annulment of the decisions of the Respondent Council dated 19th March, 1963, refusing to permit them to continue to carry out the duties of a dental assistant; each Applicant has been thereby informed that it was unanimously decided to reject his application as he did "not fulfil the requirements of section 4, sub-sections (3)-(4) of the Dentists Registration Law (as set out in section 5 of Law 76 of 1962)".

Section 5 of Law 76/62 introduced a new section 4 into Cap. 249, in the place of the old section 4, and subsection (3) of the new section 4 provides that any person who for a period exceeding 25 years before the promulgation of Law 76/62—on the 29th November, 1962—has been carry-

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ing out the duties of a dental assistant will have the right to continue carrying out such duties, provided: (a) that the Dental Council is satisfied that such person has been carrying out such duties for a continuous period of 25 years, before the promulgation of the Law in question, and (b) that such person is fit and proper to carry out the duties of a dental assistant in view of his level of knowledge, specialization, practical experience, clinical work and good character.

Under sub-section (4) of the new section 4 it is provided that the Dental Council shall examine each applicant, who alleges that he satisfied the prescribed conditions, provided that he applies to the Chairman of the Dental Council within three months from the promulgation of Law 76/62.

When Law 76/62 was to be enacted it appears that the Pancyprrian Dental Association took strong exception to the provisions of sub-sections (3) and (4) on the ground that no person, who was not duly qualified in dentistry, should be allowed to administer dental treatment in the cavity of the mouth.

It has been strongly contended during the hearing of these Cases, that two of the members of the Dental Council, Mr. Ioannides and Mr. Christofides, were before and at the time of their appointment as members of the Dental Council, so immersed in the fight against the relevant legislation that they were disqualified from participating in the proceedings of the Dental Council in relation to applications under subsection (4).

The issue thus arises, as a common one to all six Cases, whether or not the participation of Mr. Ioannides and Mr. Christofides, in the said proceedings, which culminated in rejecting the applications of all six Applicants, led to a defective composition of the Council, vitiating its sub judice decisions.

Held, I. On the composition of the Council at the time of taking the sub judice decisions:

Both Mr. Ioannides and Mr. Christofides were disqualified from participating in the relevant proceedings of the Dental Council on the ground that they were in such a position, due to their stand in the matter, that they should be regarded as having an interest in the outcome of the ap-

plications of all six Applicants, in these Cases, before the Dental Council; their antagonism was such as to give reasonably rise to a suspicion of bias, leading to their disqualification as members of the Dental Council for the purpose of dealing with Applicants' applications before it.

Statement on defective composition of a collective organ arising through the participation of a disqualified member made in the Case of *Kallouris and the Republic* (1964 C.L.R. 313) adopted.

II. On the merits :

(1) The sub judge decisions of the Council should be annulled as having been taken by a defectively composed collective organ, because of the participation at the material time, of two members who were disqualified from doing so.

(2) Relating to the particular case of Applicant Makris, the decision of the Council has to be annulled for the further reason that Mrs. Lyssioutou, a Council member in view of her office as Senior Dental Officer, was also disqualified from participating in the proceedings relating to such Applicant.

III. As regards costs :

Applicants are entitled to part of their costs which I assess at £12 for each one of them. Such costs are to be paid by the Republic, as the ultimate Respondent in these Cases.

Order : There shall, therefore, be a declaration that the several decisions of the Respondent Council communicated to each Applicant by letter dated the 19th March, 1963, are *null and void* and of no effect whatsoever.

*Decisions complained of
declared null and void.*

Observation (1). The Respondent Dental Council, composed of so many of its members as, under this judgment, have not been found to be disqualified from dealing with the applications of Applicants, or of any one of them, shall consider afresh such applications and reach new decisions thereon, unaffected completely by the decisions already annulled.

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Observation (2). As in the meantime the composition of the Dental Council has changed, by the appointment of new members, it is proper that the proceedings of interviewing and examining Applicants, shall be commenced *de novo*.

Observation (3). The Dental Council should approach the applications of Applicants with a clear and correct appreciation of the relevant legislation. It should not be misled into thinking that it is asked to permit any one of the Applicants to work, in effect, as a dentist, merely because such Applicant may have been doing so in the past. How a dental assistant is to work *from now on* is clearly laid down in sub-section (5) and the examination of Applicants' proficiency must be made in the light of such sub-section (5).

Observation (4) (a) Applicants are persons who seek to continue being dental assistants and are not seeking to enter this field for the first time. They are, therefore, to be allowed to continue being dental assistants, provided they meet reasonably required standards, in the light of sub-section (3) and they are not to be required to meet such unnecessary high standards of proficiency as to defeat the object and spirit of the legislation concerned.

(b) The Dental Council should give due reasons for any decision it may reach in future against any one of Applicants.

Cases referred to:

Kallouris and the Republic (1964 C.L.R. 313);

Decision 1187/50 of the Greek Council of State.

Allinson v. General Council of Medical Education and Registration [1894] 1 Q.B. 750;

Leeson v. The General Council of Medical Education and Registration [1889], 43 Ch. D. 366.

Recourse.

Recourse against the decision of the Respondent taken on the 7th March, 1963 refusing to permit applicants to continue to carry out the duties of a Dental Assistant.

L.N. Clerides for the applicants.

M. Spanos, Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgment was delivered by:—

TRIANTAFYLLIDES, J.: These six Cases have been consolidated together in view of the fact that there are fundamental issues common to all. It is proposed now to give one judgment for all these Cases.

All six Applicants apply for the annulment of the decisions of the Respondent Council refusing to permit them to continue to carry out the duties of a dental assistant; all such decisions are dated 19th March, 1963, and are framed in identical, sweepingly general, terms: Each Applicant has been informed that it was unanimously decided to reject his application as he did “not fulfil the requirements of Section 4, sub-sections (3)—(4) of the Dentists Registration Law (as set out in Section 5 of Law 76 of 1962)”.

It is useful to refer at once to the relevant legislation, which is the Dentists Registration Law, Cap. 249, as amended by the Dentists Registration (Amendment) Law 1962, Law 76/62, and in particular by sections 3 and 5 thereof.

Section 3, of Law 76/62 introduced a new section, 2A, into Cap. 249, which provides for the setting up of a Dental Council consisting of the Director-General of the Ministry of Health, the Director of Medical Services and the Senior Dental Officer, all three as *ex officio* members, and of one Government Dental Officer and three registered dentists, in private practice, all four being appointed by the Council of Ministers. The Chairman of this Council is the Director-General of the Ministry of Health.

The three dentists, who were the appointed members of the Dental Council, at the time material to these recourses, were Mr. P. Ioannides, Mr. Chr. Christofides and Mr. S. Saruhan, all in private practice, and Mr. Unsal, a Dental Officer.

The functions of the Dental Council, under Cap. 249 are substantially the same as those which were previously exercised by the Medical Council, under Cap. 249, except to the extent to which any changes have been effected by Law

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76/62; so, in addition to the function which is involved in the present recourses, the Dental Council, *inter alia*, effects the registration of dentists and enquires into misconduct by dentists.

Section 5 of Law 76/62 introduced a new section 4 into Cap. 249, in the place of the old section 4, and subsection (3) of the new section 4 (to be referred to hereinafter as "subsection (3)") provides that any person who for a period exceeding 25 years before the promulgation of Law 76/62— on the 29th November, 1962— has been carrying out the duties of a dental assistant will have the right to continue carrying out such duties, provided: (a) that the Dental Council is satisfied that such person has been carrying out such duties for a continuous period of 25 years, before the promulgation of the Law in question, and (b) that such person is fit and proper to carry out the duties of a dental assistant in view of his level of knowledge, specialization, practical experience, clinical work and good character.

Under sub-section (4) of the new section 4 (to be referred to hereinafter as "subsection (4)") it is provided that the Dental Council shall examine each applicant, who alleges that he satisfies the prescribed conditions, provided that he applies to the Chairman of the Dental Council within three months from the promulgation of Law 76/62. Under sub-section (5) of the new section 4 (to be referred to hereinafter as "subsection (5)") it is provided that no dental assistant will be entitled to carry out his duties unless he is acting with the authorization, under the control and supervision and in the consulting room of a dentist, who shall be responsible for any negligence or omission of the dental assistant in carrying out his duties.

All six Applicants in these Cases, duly applied to the Dental Council under sub-section (4), above; their applications were rejected and they have filed the present recourses. It is proper at this stage to mention, for the sake of giving a full and true picture of relevant events, that they were not the only persons who applied for the purpose to the Dental Council; there were others and their applications were also all rejected by the Dental Council or were withdrawn; no relevant application was approved by the Dental Council.

When Law 76/62 was to be enacted it appears that the Pan-cyprian Dental Association took strong exception to the

provisions of sub-sections (3) and (4) on the ground that no person, who was not duly qualified in dentistry, should be allowed to administer dental treatment in the cavity of the mouth.

A Committee of Struggle was formed by the Association to oppose the enactment of the relevant Bill. After the enactment of the Law, the Committee of Struggle ceased to exist as such, but the Pancyprian Dental Association decided to continue its opposition to this legislation; so its governing body, its Committee, strengthened by a new Special Committee elected for the purpose, was charged with the task.

It has been strongly contended that two of the members of the Dental Council, Mr. Ioannides and Mr. Christofides, were before and at the time of their appointment as members of the Dental Council, so immersed in this fight against the relevant legislation that they were disqualified from participating in the proceedings of the Dental Council in relation to applications under sub-section (4).

The issue thus arises, as a common one to all six Cases, whether or not the participation of Mr. Ioannides and Mr. Christofides, in the said proceedings, which culminated in rejecting the applications of all six Applicants, led to a defective composition of the Council, vitiating its sub judice decisions.

In the Case of *Kallouris and the Republic* (1964 C.L.R. 313) this Court went into the question of defective composition of a collective organ arising through the participation of a disqualified member; whatever has been stated on the point in the judgment in that Case is hereby adopted for the purposes of this judgment and need not be repeated.

It is useful to add only that the Greek, and also the French legal principles, which have been adopted by this Court as correct law in the case of *Kallouris*, hold good in the Anglo-Saxon legal world also. The principle of proper administration laid down in Decision (of the Greek Council of State) 1187/1950, which was relied on in the case of *Kallouris* by this Court, is fully echoed in the words of Lord Esher, M.R. in *Allinson v. General Council of Medical Education and Registration* ([1894] 1 Q.B. 750), as they have been adopted in "Natural Justice" by Marshall at p. 114, Lord Esher said, *inter alia*, "The question is not, whether in fact he was or

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was not biased. The court cannot inquire into that. There is something between these two propositions. In the administration of justice, whether by a recognized legal court or by persons who, although not a legal public court, are acting in a similar capacity, public policy requires that, in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biased".

In the aforesaid case Lord Esher was dealing with the validity of proceedings against the plaintiff, Allinson, which had been instituted before the defendant General Council of Medical Education and Registration, but the requirement of public policy, which he propounded, is a general principle of proper administration. It is the same as the need that organs of administration must appear to guarantee an independent judgment, which was propounded in the aforesaid Decision, of the Greek Council of State, 1187/1950.

In the case of *Kallouris (supra)* the defect which was held to disqualify the member of the collective organ concerned was family relationship; but the principle stated, by the Greek Council of State, in Decision 1187/1950 (*supra*) treats as a ground of disqualification any ties or a special relationship, with the persons for which the matter under examination refers, or an interest in the outcome of such matter.

Let us now examine specifically whether either Mr. Ioannides or Mr. Christofides ought to have been regarded as being disqualified from participating in the relevant proceedings of the Dental Council.

Mr. Ioannides has stated himself in evidence, that he was a member of the Committee of Struggle which was formed to oppose the enactment of the relevant amendment of Cap. 249. Then he became a member of the governing body, of the Committee, of the Association and also its General Secretary, which is the highest office in the Association. As such he continued to be in the forefront of the opposition against Law 76/62, which had been enacted in the meantime.

Though he was not a member of the new Special Committee which was elected to continue the opposition against subsections (3) and (4), after the enactment of Law 76/62, it is absolutely clear from the minutes of the general meeting of the Pancyprrian Dental Association, held in December, 1962,

(which are in evidence) that such opposition was to be waged mainly by the Committee proper of the Association, including Mr. Ioannides, of course, as its General Secretary. and that the aforesaid Special Committee was elected to strengthen the Committee proper of the Association in its efforts.

So, in substance and in fact, Mr. Ioannides continued to be in the spearhead of the Pancyprian Dental Association's struggle against the objectionable to it legislation.

As it appears from the minute-book of the Pancyprian Dental Association, Mr. Ioannides attended at least two meetings, of what was again described as the Committee of Struggle, on the 12th and 19th December, 1962, after the enactment of Law 76/62; they were meetings of the Committee proper of the Association and of the Special Committee elected at the general meeting of the Association, in December, 1962, as already stated.

On the 20th December, 1962, the appointment of Mr. Ioannides as a member of the Dental Council was published in the official Gazette. It is significant to note a decision reached at the meeting of the new mixed Committee of Struggle, held on the previous day, the 19th December, 1962, at which Mr. Ioannides was present. It is recorded as follows: «Αποφασίζεται ή κατάθεσις τροπολογίας (α) να καταργη την παράγραφον (β) ή να όρισθούν μερικα καθήκοντα (γ) ή να προστεθη ό όρος 'άπαγορεύεται καθ' οίονδήποτε τρόπον ή επέμβασις στη στοματική κοιλότητα'». ("It is resolved to table an amendment (a) to repeal the paragraph"—presumably sub-section (3)—“(b) or to define certain duties (c) or to add the condition 'it is prohibited to interfere in any way with the cavity of the mouth'". The meeting was attended also by Mr. G. Tombazos, a dentist and member of the House of Representatives.

When giving evidence Mr. Ioannides has testified very frankly that he approved all along of the contents of a resolution published by the Pancyprian Dental Association in the press on the 21st October, 1962 (and particularly in the newspaper "Phileleftheros", which has been put in evidence). A mere perusal of such resolution leads to clear conclusions about the absolute opposition of Mr. Ioannides to the controversial legislation in question and its foreseen effect viz. permitting persons, such as Applicants, to interfere with the cavity of the mouth.

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Actually some time earlier, on the 1st December, 1962, as it appears from the minute-book of the Pancyprrian Dental Association, Mr. Ioannides expressed views denoting his hopes that the Dental Council would be able "to reject all applicants".

Though proof of actual knowledge by others of the grounds for disqualification is not necessary, it is a fact that the stand of Mr. Ioannides in the matter of Law 76/62 must have been widely known. His name appeared at the head of a list of names, published in the *Ethniki* newspaper of the 9th December, 1962, (which is in evidence), as being the names of the members of the new Committee of Struggle against such Law. Though Mr. Ioannides has told the Court that this publication was unauthorized the fact remains that publicity was given to his stand in the matter and also it is useful to note that the names published coincide with the names of the members of the Committee proper of the Association and of the Special Committee which had been elected in December 1962 for the pressing on of the struggle against the legislation in question.

Mr. Christofides is the other member concerned of the Dental Council. It is true that he has played a less prominent part than Mr. Ioannides in opposing the legislation in question; for example, he did not take part in some of the relevant meetings recorded in the minute-book of the Pancyprrian Dental Association. But he was a member of the Committee proper of the Association which was elected at the time and which, together with the Special Committee elected in December 1962, was entrusted to continue the opposition to such legislation. His name was published in newspaper *Ethniki* on the 9th December, 1962, along with that of Mr. Ioannides, as aforesaid.

For all the above reasons I am satisfied that both Mr. Ioannides and Mr. Christofides were disqualified from participating in the relevant proceedings of the Dental Council on the ground that they were in such a position, due to their stand in the matter, that they should be regarded as having an interest in the outcome of the applications of all six Applicants, in these Cases, before the Dental Council. They could reasonably, in substance and fact,—more Mr. Ioannides but, sufficiently for the purpose, Mr. Christofides too—be suspected of being biased. As Lord Esher has put

it in the case of *Allinson (supra)* "The question of incapacity is to be one 'of substance and fact' and therefore it seems to me that the man's position must be such as that in substance and fact he cannot be suspected. Not that any perversely minded person cannot suspect him, but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biased".

The interest of Mr. Ioannides and Mr. Christofides though not pecuniary was still a vital interest sufficient to disqualify them for the purpose. It is not only pecuniary interest that is sufficient to incapacitate. It is any interest that can reasonably create a suspicion of bias.

It is useful to bear in mind, in judging the extent and depth of the interest of Mr. Ioannides and Mr. Christofides in the matter, the following too:—

The Applicants at the time of the enactment of Law 76/62 were members of a limited and dying class of persons, the existence of which must have been quite well known to the Pancyprian Dental Association's organs, and to Mr. Ioannides and Mr. Christofides in particular; it was for the benefit of such class that the said amendment had been introduced. The efforts made in opposition to the relevant legislation, both before and after its enactment, were directed at preventing the members of this existing class of persons, including the Applicants, from being legalized in continuing to act as dental assistants.

In the circumstances, I have no doubt that both Mr. Ioannides and Mr. Christofides stood in a special antagonistic relationship to the said class of persons, including Applicants; their antagonism was such as to give reasonably rise to a suspicion of bias, leading to their disqualification as members of the Dental Council for the purpose of dealing with Applicants' applications before it.

It might be observed that practically all dentists in Cyprus, being members of the Pancyprian Dental Association, and being in opposition to the relevant legislation, would be likewise disqualified from dealing with the applications of Applicants before the Dental Council; I believe that such view would be erroneous in that it would be unreasonable. I do not think that it would be proper to hold that dentists, not taking a leading or active part in opposing the legislation

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in question, could be regarded as *sufficiently* involved in the matter as to be treated as disqualified from membership of the Dental Council for the particular purpose. In this respect, it is useful to bear in mind the case of *Leeson v. The General Council of Medical Education and Registration* ([1889], 43 Ch. D. 366)—also mentioned by Marshall in his book on “Natural Justice”—where it was held that persons who were members of the said Council and also members of a Union which was involved in proceedings before the said Council, but who were not members of the managing body of such Union, did not have such an interest in the matter in question, as to be disqualified from taking part in the proceedings. As shown, also, by the case of *Allinson (supra)* even a member of the managing body of the same Union, was considered, in special circumstances pertaining to him (lack of any active participation whatsoever), as not being disqualified.

It is always a matter of substance and fact in each case; and in the present Cases I have no doubt that the proper conclusion should be, as already stated, that Mr. Ioannides and Mr. Christofides ought to be regarded as disqualified, though other dentists, who did not play an active role in the matter, need not be so regarded.

Of course, the Dental Council has other functions in addition to considering applications by dental assistants; what I have already stated in this judgment does not, by any means, invalidate the appointments of Mr. Ioannides and Mr. Christofides to the Dental Council, but merely disqualifies them from dealing with applications by dental assistants, under the relevant new legislation.

I have no reason to doubt that both Mr. Ioannides and Mr. Christofides are persons of integrity. But as laid down, also in the case of *Kallouris (supra)*, the test is not subjective but objective; the test is not whether or not the disqualified member of a collective organ has, in fact, acted partially or impartially or whether or not he has actually contributed to a partial decision of such organ, but whether or not due to his presence and participation in the relevant proceedings, the guarantee of an independent judgment of the said organ has been impaired and a presumption of bias has arisen shaking thus the confidence of the subject in the impartiality of the administration, as in my opinion, is the position in these Cases.

Moreover, it is a fact that the faith of the Applicants, themselves, in the independence and impartiality of the Dental Council was actually severely shaken in the circumstances. It is common ground that at least two of the Applicants—and this is also confirmed by Dr. Vassilopoulos in his evidence and by the relevant minutes—expressed themselves to the effect that they did not trust the Council. One of these Applicants, Makris, at the interviews held by the Council on the 7th February, 1963, asked Mr. Ioannides to give his word of honour that there was no preconceived arrangement to reject all candidates. This is recorded at p. 5 of the minutes of the Dental Council for that date; it was omitted later when the particular page was redrafted. But on the totality of the evidence I am satisfied that it has taken place; otherwise it could not have been recorded in the first place by Mr. Petrides, the Secretary of the Council, who impressed me as being a very meticulous person.

It appears also that even one of the members of the Dental Council held the view that there was considerable prejudice, to say the least, against Applicants. The relevant facts are as follows:

It has been stated in evidence by Applicant Makris that Mr. Unsal, a member of the Dental Council at the time—who has not been able to attend in order to give evidence—had confided to him, before the appearance of the Applicants before the Council, that there was a preconceived scheme, among the dentists-members of the Dental Council, to reject all candidates.

I am prepared to accept that information of this nature was in fact passed on by Mr. Unsal to Applicant Makris; in this respect I accept his evidence, as corroborated, in particular, by that of witness Dr. Theofanides, a Government Medical Officer who happened to be present at a conversation on the point, between Applicant Makris and Mr. Unsal.

It is very significant, too, that Applicant Makris complained of this matter to the Council itself at the meeting of the 7th February, 1963.

In the absence, however, of the direct evidence of Mr. Unsal it would not be proper, or fair to him or anybody else concerned, to make any finding as to whether or not in fact such a preconceived scheme ever existed. I would, in

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any case, be not prepared to reach a conclusion in the affirmative without positive evidence to support it; it is, practically, a criminal matter.

The fact remains, however that, as I have found already, Mr. Unsal did pass on this information to Applicant Makris. Assuming, as it is in the circumstances proper to assume in fairness to all concerned, that such information was inaccurate, but bearing also in mind that it has not been even suggested at all by any one that Mr. Unsal lied deliberately on this point to this Applicant, it is, then, reasonable to conclude that Mr. Unsal told Applicant Makris of a pre-conceived scheme, having been led to think so by the known to him, as a dentist, strong feelings, in the matter, of some dentists-members of the Council, which he must have noticed being manifested.

These aforementioned suspicions, first on the part of Applicants and then on the part of Mr. Unsal, do strengthen, though not necessary for it, my earlier conclusion about the existence of grounds for reasonable suspicion of bias. One cannot escape thinking, in this respect, that the polemics against the relevant legislation, in which Mr. Ioannides and Mr. Christofides had been actively involved, must have contributed a lot to the actual suspicions which arose, as above, about the intentions of some members of the Dental Council.

I would add that, I am satisfied, that the stand of Mr. Ioannides and Mr. Christofides in the matter of this controversial legislation was not a mere question of difference of opinion but an instance of unrelenting, at all costs, struggle against the new legislation and its consequences.

Mr. Ioannides and Mr. Christofides took part in both the relevant meetings of the Dental Council, on the 7th February and 7th March, 1963, when all Applicants' cases were dealt with. So, in the light of the principles laid down in the case of *Kallouris (supra)* I have reached the conclusion that the sub judice decisions of the Council should be annulled as having been taken by a defectively composed collective organ, because of the participation, at the material time, of two members who were disqualified from doing so.

Relating to the particular case of Applicant Makris, the decision of the Council has to be annulled for the further

reason that Mrs. Lyssioutou, a Council member in view of her office as Senior Dental Officer, was also disqualified from participating in the proceedings relating to such Applicant.

I am convinced that the relations of this Applicant—who is a dental mechanic working under her—and of Mrs. Lyssioutou have been very bad. There has been continuous trouble between them, they have been officially reporting each other, and, furthermore, it is Mrs. Lyssioutou herself who has prevented in the past the Applicant from carrying out any work in the mouth of patients. I do accept as correct the evidence of Mr. Papasavvas, a Government Dental Officer, who said that it is known to the whole Dental Department that the relations between the Applicant and Mrs. Lyssioutou are not good. I am satisfied, in the light of all relevant evidence, that this is much more than the usual case of intra departmental friction; it is a case of obvious bad relations.

I have no reason to doubt that Mrs. Lyssioutou is a person of integrity; but this is not the decisive factor. What matters is whether her relations with such Applicant are such that they could give rise, reasonably, to a suspicion of bias; I am satisfied that this is so.

In the circumstances, I find that both because of the bad relations that existed between Applicant Makris and Mrs. Lyssioutou and because of her own action in having herself prevented, for some time in the past, this Applicant from doing any work in the mouth of patients—a thing which he would do to a certain extent if found qualified as a dental assistant by the Dental Council—it is proper to hold that Mrs. Lyssioutou was disqualified from participating in the relevant proceedings of the Dental Council and that the decision of the Council against Applicant Makris should be set aside on this ground too.

Before annulling the sub judice decisions of the Council I have made sure that no question of disqualified members *having had* to participate in the proceedings of the Dental Council, out of necessity for the purposes of quorum, could have possibly arisen. The Dental Council consists of seven members and the maximum number of persons found to be disqualified in relation to any one Applicant (in the case of Makris) is three persons. Under section 2A(3) of Cap. 249, as amended by Law 76/62, the remaining four members of the

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Council, including its Chairman would have formed a quorum.

There shall, therefore, for the reasons set out in this judgment, be a declaration that the several decisions of the Respondent Council communicated to each Applicant by letter dated the 19th March, 1963, are *null* and *void* and of no effect whatsoever.

The Respondent Dental Council, composed of so many of its members as, under this judgment, have not been found to be disqualified from dealing with the applications of Applicants, or of any one of them, shall consider afresh such applications and reach new decisions thereon, unaffected completely by the decisions already annulled.

As in the meantime the composition of the Dental Council has changed, by the appointment of new members, it is proper that the proceedings of interviewing and examining Applicants, shall be commenced *de novo*.

In view of the result reached in these Cases it is not necessary to deal with any other issues arising therein, especially issues such as whether or not the past work of Applicants such as Drucker or Makris satisfies the requirements of sub-section 3 (a) or whether the relevant knowledge and experience of each Applicant has been correctly assessed by the Respondent Council. These are issues which have to be decided by the Dental Council and this Court does not deem it proper to say anything at this stage which may be deemed as prejudging issues of mixed law and fact or of fact alone, as such issues are.

I think, however, that it is useful to make some general observations for the guidance of the Dental Council:

- (a) The Dental Council should approach the applications of Applicants with a clear and correct appreciation of the relevant legislation. It should not be misled into thinking that it is asked to permit any one of the Applicants to work, in effect, as a dentist, merely because such Applicant may have been doing so in the past. How a dental assistant is to work *from now on* is clearly laid down in sub-section (5) and the examination of Applicants' proficiency must be made in the light of such sub-section (5).

- (b) Applicants are persons who seek to continue being dental assistants and are not seeking to enter this field for the first time. They are, therefore, to be allowed to continue being dental assistants, provided they meet reasonably required standards, in the light of sub-section (3), and they are not to be required to meet such unnecessary high standards of proficiency as to defeat the object and spirit of the legislation concerned.
- (c) The Dental Council should give due reasons for any decision it may reach in future against any one of Applicants.

I have deemed it proper to make the se observations because in these Cases, on the totality of relevant circumstances—had I had to decide the issues concerned—I *might* have had to reach the conclusion that there existed further reasons, for annulling the sub judice decisions, arising out of matters touched upon by the observations which I have just made. So I think it is proper to put the Dental Council on its guard against any future errors.

Regarding costs I do feel that Applicants are entitled to part of their costs which I assess at £12 for each one of them. Such costs are to be paid by the Republic, as the ultimate Respondent in these Cases.

Decisions complained of declared null and void. Order as to costs as aforesaid.

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