

1979 December 18

[TRIANTAFYLIDES, P.]

PANAYIOTIS PAPASAVVAS,

Applicant,

v.

THE EDUCATIONAL SERVICE COMMITTEE,

Respondent.

(Application No. 40/79).

Certiorari—Prohibition—Article 155.4 of the Constitution—Disciplinary proceedings before Educational Service Committee—Whether their essential nature such that they do not come within the ambit of Article 146.1 of the Constitution—Leave to apply for orders of Certiorari and Prohibition in relation to such proceedings granted—
5 *Court not prepared, on the basis of the material at present before it, to pronounce on issue of jurisdiction to make such orders—Said issue reserved for determination at the outset of the consideration of the merits of the application.*

10 This was an application for leave to apply for orders of Certiorari and Prohibition in respect of proceedings pending in relation to the applicant, before the respondent Committee for charges preferred against him under the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977
15 (Law 3/77) and the Public Educational Service Law, 1969 (Law 10/69).

Held, that in view of its decisions in the prima facie similar, though not identical, cases of *Vassiliou and another v. Police Disciplinary Committees* (1979) 1 C.L.R. 46, and *Economides v. Military Disciplinary Board* (1979) 1 C.L.R. 177, this Court entertains doubts as to whether or not it possesses the necessary
20 jurisdiction; that as, however, the Committee in question is an organ different, in more than one way, from the organs involved in the said two cases and, since it has been pointed out in the *Vassiliou* case, *supra*, at p. 54, and, also, in the *Economides* case, *supra*, at p. 187, that the possibility cannot be excluded that,
25

depending on the material available before the Court in relation to particular disciplinary proceedings, it might be argued that their essential nature is such that they do not come within the ambit of Article 146.1 of the Constitution, but within that of Article 155.4 of the Constitution, in which case the jurisdiction to make in respect of them an order of Certiorari or of Prohibition would exist, this Court is not prepared, on the basis of the material at present before it in this particular instance, to pronounce, at this very early stage, that it does not possess jurisdiction under Article 155.4, above, to make in this case the orders of Prohibition and Certiorari which are applied for by the applicant; that, therefore, in the light of the foregoing and of the special circumstances of this case, the better course is to grant, at this stage, leave to the applicant to apply for orders of Certiorari and Prohibition and to reserve the relevant issue of jurisdiction of this Court for determination at the outset of consideration of the merits of the application; and that, accordingly, leave for the filing within three days from today, of an application for orders of Prohibition and Certiorari will be granted.

Application granted. 20

Cases referred to:

Vassiliou and Another v. Police Disciplinary Committees (1979)
1 C.L.R. 46;

Economides v. Military Disciplinary Board (1979) 1 C.L.R. 177;

Zenios and Another v. Disciplinary Board (1978) 1 C.L.R. 382. 25

Application.

Application for leave to apply for orders of Certiorari and Prohibition in connection with proceedings pending in relation to applicant before the Educational Service Committee in respect of charges preferred against him under the Certain Disciplinary Offences (Conduct of Investigation) Law, 1977 (Law 3/77) and the Public Educational Service Law, 1969 (Law 10/69). 30

E. Vrahimi (Mrs.) for the applicant.

Cl. Antoniadis with *S. Papavasvas*, Counsel of the Republic, for the Educational Service Committee. 35

Cur. adv. vult.

TRIANAFYLLIDES P. read the following decision. Leave is being sought, by means of this application, to apply for orders of Certiorari and Prohibition in respect of proceedings pending

in relation to the applicant before the Educational Service Committee; it appears that in the said proceedings charges have been preferred against him under the Certain Disciplinary Offences (Conduct of Investigation and Adjudication) Law, 1977 (Law 3/77) and the Public Educational Service Law, 1969 (Law 10/69).

I have heard counsel on the issue of the jurisdiction of this Court to make at all an order of Prohibition or of Certiorari in respect of proceedings of a nature such as that of those pending, as aforesaid, before the Educational Service Committee.

In view of my decisions in the prima facie similar, though not identical, cases of *Vassiliou and another v. Police Disciplinary Committees*, (1979) 1 C.L.R. 46, and *Economides v. Military Disciplinary Board*, (1979) 1 C.L.R. 177, I must say that I do entertain doubts as to whether or not I possess the necessary jurisdiction.

As, however, the Committee in question is an organ different, in more than one way, from the organs involved in the *Vassiliou* and *Economides* cases, *supra*, and, since it has been pointed out in the *Vassiliou* case, *supra*, at p. 54, and, also, in the *Economides* case, *supra*, at p. 187, that the possibility cannot be excluded that, depending on the material available before the Court in relation to particular disciplinary proceedings, it might be argued that their essential nature is such that they do not come within the ambit of Article 146.1 of the Constitution, but within that of Article 155.4 of the Constitution, in which case the jurisdiction to make in respect of them an order of Certiorari or of Prohibition would exist, I am not prepared, on the basis of the material at present before me in this particular instance, to pronounce, at this very early stage, that this Court does not possess jurisdiction under Article 155.4, above, to make in this case the orders of Prohibition and Certiorari which are applied for by the applicant.

It is correct that in the *Vassiliou* case, *supra*, it became possible to decide on the issue of jurisdiction at the stage of the application for leave to apply for orders of Certiorari and Prohibition; but, on the other hand, in the *Economides* case, *supra*, leave was granted to apply for an order of Prohibition and the issue of jurisdiction was dealt with when examining the merits of the application. Also, in *Zenios and another v. Disciplinary Board*,

(1978) 1 C.L.R. 382, 387, there was adopted the course of granting leave to apply for orders of Certiorari and Prohibition and the question of the jurisdiction was left to be decided later "together with all other relevant issues".

I have, therefore, in the light of the foregoing and of the special 5
circumstances of the present case, decided that the better course
is to grant, at this stage, leave to the applicant to apply for orders
of Certiorari and Prohibition and to reserve the relevant issue
of jurisdiction of this Court for determination at the outset of 10
the consideration of the merits of the application. In this
connection there will have to be examined, *inter alia*, whether
or not the Educational Service Committee, in carrying out its
task in the present case, is to be treated as being an administra-
tive disciplinary organ, in which case, of course, in the light of the 15
Vassiliou and *Economides* cases, *supra*, I would not possess
jurisdiction under Article 155.4 to make the applied for orders
of Certiorari and Prohibition, or the said Committee is to be
regarded as a judicial committee, in the sense of Article 30.1
of the Constitution or otherwise, in which case I would be able 20
to exercise the powers of this Court under the said Article 155.4.

I, therefore, grant leave for the filing, within three days from 25
today, of an application for orders of Prohibition and Certiorari.
Any opposition thereto is to be filed within a week thereafter.
The said application, if filed, will be heard on January 5, 1980,
at 8.30 a.m.

The proceedings before the Educational Service Committee
are stayed initially for a period of three days and if an
application for orders of Certiorari and Prohibition is filed
within such period then they shall remain stayed until a further 30
order of this Court.

Copy of the present order for leave to apply for orders of
Certiorari and Prohibition is to be delivered to the Educational
Service Committee.

Application granted.