1983 March 14

[L. LOIZOU, HADJIANASTASSIOU, A. LOIZOU, SAVVIDES, LORIS, PIKIS, JJ.]

EMILIOS A. FRANGOS,

Appellant-Applicant,

v.

MEDICAL DISCIPLINARY BOARD AND OTHERS,

Respondents.

(*Civil Appeal No.* 6307).

Judicial decision—Characteristics of—Decisions of Medical Disciplinary Board—Not judicial decisions but administrative decisions—Not amenable to judicial review under Article 155.4 *of the Constitution.*

Jurisdiction—Disciplinary proceedings before Medical Disciplinary Board—No jurisdiction to grant orders of certiorari and prohibition, under Article 155.4 *of the Constitution in relation to such proceedings, because they come within the jurisdiction under Article* 146.

The Medical Council preferred a charge against the appellant, a medical practitioner, before its Disciplinary Board, accusing him of breach of the Rules of Etiquette* of the medical profession—Rule 25 in particular—prohibiting medical practitioners from entering into contracts for the rendering of medical services without the prior approval of the Medical Association. Following the preferment of the charge the appellant applied under Article 155.4 of the Constitution, for a writ of certiorari to quash proceedings antecedent to and connected with the disciplinary prosecution against him before the Disciplinary Board of the Medical Council, as manifestly contrary to law. An order of prohibition was also prayed for to restrain the Disciplinary Board from taking further cognizance of the matter.

* The Rules of Etiquette were enacted by the Medical Council, in exercise of the powers delegated to them by s.13(1)(b) of the Medical Practitioners (Associations, Discipline and Pension Funds) Laws 1967-79.

The trial Court dismissed the application for lack of jurisdiction inclining to the view that the decision complained of, if at all amenable to review, is a decision of a kind assigned to the exclusive jurisdiction of the Supreme Court under Article 146, the article of the Constitution setting up the Supreme Court as the Administrative Court of the land.

Upon appeal:

Held, that the jurisdiction of the Supreme Court under Article 155.4 of the Constitution covers judicial proceedings and the purpose of judicial review by means of prerogative writs, under the above article, is to ensure that inferior tribunals operate within the limits of their jurisdiction and exercise their powers within the limits set by law; that for a decision to be of a judicial character it must emanate out of a Court of judicature and must aim at defining the rights of the parties under the general law; that the decisions of the Disciplinary Committee of the Medical Council have none of the characteristics of a judicial decision; that the body issuing them is certainly not a Court of judicature but a domestic tribunal, primarily concerned with the upkeep of a code of ethics among medical practitioners; that its decisions have all the characteristics of administrative decisions; they aim to promote proper standards among the medical profession within the context of a domestic code of conduct; that unlike advocates, the medical profession has no immediate affinity to the administration of justice; that, therefore, the decisions complained of are not amenable to judicial review by means of prerogative writs under Article 155.4 of the Constitution; accordingly the appeal must fail.

Appeal dismissed.

Cases referred to:

Ramadan v. *Electricity Authority of Cyprus*, 1 R.S.C.C. 49;

Vassiliou and Another v. *Disciplinary Committee* (1979) 1 C.L.R. 46;

In re C.H. an Advocate (1969) 1 C.L.R. 561;

Re S. (a barrister) [1969] 1 All E.R. 949;

Royal Acquarium and Summer and Winter Garden Society Ltd. v. *Parkinson* [1892] 1 Q.B. 431 at p. 447;

Attorney-General v. *British Broadcasting Corporation* [1978] 2 All E.R. 731;

Re Racal Communications [1980] 2 All E.R. 634 (H.L.):

R. v. *Barnsley* [1976] 3 All E.R. 452:

Tehrani v. *Rostron* [1971] 3 All E.R. 792 (C.A.):

Huddart Parker & Co. (Proprietary) Ltd v. *Moorehead*, VIII C.L.R. 357;

United Engineering Workers Union v. *Devanayagam* [1967] 2 All E.R. 367:

Guilfoyle v. *Home Office* [1981] 1 All E.R. 943:

R. v. *Gateshead Justices* [1981] 1 All E.R. 1027:

R. v. *Secretary of State for Environment* [1976] 3 All E.R. 90;

R. v. *Hull Prison Board of Visitors* [1979] 1 All E.R. 701;

Demetriades & Sons and Another v. *Republic* (1969) 3 C.L.R. 557.

Appeal.

Appeal by applicant against the judgment* of the President of the Supreme Court of Cyprus (Triantafyllides, P.) dated the 12th September, 1981 (Appl. No. 9/81) whereby his application for orders of prohibition and certiorari was dismissed for lack of jurisdiction.

A. Myrianthis, for the appellant.

Cl. Theodoulou (*Mrs.*), Counsel of the Republic with *S. Nathanael*, for the respondent.

L. LOIZOU J. Pr.: We consider it unnecessary to call upon counsel for the respondents to address us. Pikis, J. will deliver the judgment of the Court.

PIKIS J.: The appellant, a medical practitioner of long standing, applied for a writ of certiorari to quash proceedings antecedent to and connected with a disciplinary prosecution against him before the Disciplinary Board of the Medical Council, as manifestly contrary to law. An order of prohibition was also prayed for to restrain the Disciplinary Board from taking further cognizance of the matter.

The Medical Council preferred a charge against the appellant before its Disciplinary Board, accusing him of breach of the Rules of Etiquette of the medical profession - Rule 25 in particular - prohibiting medical practitioners from entering into contracts for the rendering of medical services without the prior

* Reported in (1981) 1 C.L.R. 691.

approval of the Medical Association. The Rules of Etiquette were enacted by the Medical Council, in exercise of the powers delegated to them by s. 13(1)(b) of the Medical Practitioners (Associations, Discipline and Pension Funds) Laws 1967 - 79. (See, *Official Gazette No.* 3 - *Regulatory Acts. Not.* 206 - gazetted on 10.11.72 under 972).

The application for judicial review is founded on the provisions of Article 155.4 of the Constitution, conferring jurisdiction upon the Supreme Court to issue prerogative writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. The Court was asked to quash the decision to prosecute the applicant and matters connected therewith, on the ground that reg. 25 upon which the prosecution rested, is invalid because allegedly it is ultra-vires the enabling law.

The trial Court dismissed the application for lack of jurisdiction. The learned President who tried the case, inclined to the view that the decision complained of, if at all amenable to review, is a decision of a kind assigned to the exclusive jurisdiction of the Supreme Court under Article 146, the article of the Constitution setting up the Supreme Court as the Administrative Court of the land. In an elaborate and well reasoned judgment, if I may say so with respect, analysis is made of the separate jurisdictions entrusted to the Supreme Court under Articles 146.1 and 155.4. It is pointed out that both, as a matter of interpretation and on authority, the jurisdiction of the Supreme Court under Article 155.4 is exclusive of the jurisdiction specifically entrusted to the Supreme Constitutional Court and, now to the Supreme Court in virtue of Law 33/64* under Article 146. Therefore, the jurisdiction with which the High Court was invested and, now the Supreme Court in accordance with the provisions of Law 33/64 by Article 155.4, is not coincident or coextensive with that previously exercised by the Supreme Court of the colony of Cyprus. As compared to the jurisdiction formerly vested in the Supreme Court of the colony of Cyprus, the jurisdiction of the Supreme Court presently exercisable under Article 155.4 of the Constitution, is limited to the judicial review of acts, decisions and omissions

* Administration of Justice (Miscellaneous Provisions) Law

not amenable to the revisional jurisdiction of the Supreme Court under Article 146.1. The matter was authoritatively settled by the Supreme Constitutional Court soon after the establishment of the Republic, in *Hussein Ramadan* v. *Electricity Authority of Cyprus and Another,* 1 R.S.C.C. 49. After analysis of the relevant provisions of the Constitution, their wording and arrangement, it was held there is no jurisdiction under Article 155.4 to review acts of an executive and administrative character justiciable under Article 146.1. The provisions of Article 152.1 were found to be of special significance in earmarking the distinct jurisdictions of the Supreme Constitutional Court and the High Court. The provisions of Article 136 of the Constitution pointed to the same conclusion.

The decision in *Ramadan* supra, was followed by the Supreme Court and its ratio given effect to in *Vassiliou & Another* v. *Disciplinary Committees* (1979) 1 C.L.R. 46. Disciplinary proceedings against a police officer under the *Police (Discipline) Regulations,* 1958 - 77, were held to be inamenable to judicial review under Article 155.4 of the Constitution because they constituted administrative acts exclusively falling within the revisional jurisdiction of the Supreme Court under Article 146.1.

Mr. Myrianthis pressed before us the same points he raised before the trial Court, in his attempt to persuade us that the trial Court went wrong in ruling that proceedings before the Disciplinary Committee of the Medical Council were not of a judicial or kindred character. He argued that the Disciplinary Committee is, on account of its composition, powers and functions, a judicial body. He submitted, this view of the character of the proceedings is strengthened on a consideration of the provisions of s.13(1) of the Medical Registration Law - Cap. 250, that apparently survived the many amendments to the provisions of Cap.250, conferring a right of appeal to a medical practitioner whose name was ordered to be erased from the Register or whose suspension was ordered for any period of time. In the contention of counsel, the provisions of s.13(1) seal the character of the proceedings and justify their classification as judicial. A comparable provision in the Advocates Law, safeguarding a right of appeal to an advocate convicted of a disciplinary offence, leads, in the contention of counsel,

inexorably to an assimilation of proceedings between the two disciplinary bodies. Hence, both should be treated as of a basically judicial character, reviewable under Article 155.4 of the Constitution. These submissions carried no favour of the learned trial Judge and have carried none with us, either.

The association of the legal profession with the administration of justice was held in Cyprus, as in other jurisdictions, sufficient to attach the imprint of judicial proceedings upon proceedings for the discipline of advocates. The reasoning behind is that, their conduct and strict observance of the Rules of Etiquette, is a fact of direct relevance to the administration of justice. Therefore, an appeal by an advocate lies, from a decision of the Advocates Disciplinary Committee in the circumstances envisaged by the Advocates Law - Cap. 2 (as amended), in a manner similar to decisions of inferior Courts. The question was canvassed at length *In Re C. H., An Advocate* (1969) 1 C.L.R. 561. A similar solution was given to the same problem in both Greece and France, countries that recognise administrative law as an organic part of the law of the country.

In England, admission and discipline of barristers has always been subject to the residual jurisdiction of Judges who concurred for a long time without relinquishing the jurisdiction to its exercise by Visitors to the Inns of Court and, as from 1966 by the Senate of the Inns - *Re.S. (a barrister)* [1969] 1 All E.R. 949.

It is the association of the legal profession with the administration of justices that colours proceedings against advocates with the characteristics of judicial proceedings. As explained, the ethics of advocates are all important for the proper administration of justice. Had it not been for this association, disciplinary proceedings against advocates designed to uphold a domestic code of conduct for the profession would, like any other proceedings in aid of professional etiquette, classify as administrative. The medical profession has no intrinsic connection with the administration of justice; consequently, there is no reason in principle why disciplinary proceedings against medical practitioners should be treated as anything other than administrative proceedings. In Greece, disciplinary proceedings against members of the medical profession, qualify

as administrative proceedings, subject to the revisional jurisdiction of the Council of State.

In England, notwithstanding the amenity to review by way of prerogative writs, decisions of courts of record, whether of a judicial or administrative character, there again, the Medical Council, in the exercise of its disciplinary jurisdiction, is not regarded as a court of record. So, its decisions are not subject to judicial review. (See, *Royal Aquarium and Summer and Winter Garden Society Ltd. v. Parkinson* [1892] 1 Q.B. 431, 447 and, *Attorney-General* v. *British Broadcasting Corporation* [1978] 2 All E.R. 731).

To appreciate in a proper perspective the proper limitations of the jurisdiction under Article 155.4 of the Constitution and, in order to evaluate the implications of English precedent, it is necessary to examine the basis of the jurisdiction and range of decisions that may legitimately become the subject of judicial review. Judicial review by means of prerogative writs, derives from the original jurisdiction of the English High Court, inherited from the old Court of King's Bench to review decisions of inferior tribunals. - *Re Racal Communications* [1980] 2 All E.R. 634 (H.L.). In contrast, a right of appeal does not inhere in the English judicial system but is exclusively the offspring of Statute. That a right of appeal lies from the decisions of a given tribunal, it does not necessarily mean that the decisions of that tribunal are invariably subject to judicial review.

Judicial as well as administrative decisions of inferior tribunals, are liable to judicial review. (See, inter alia, *R. v. Barnsley M.B.C.* [1976] 3 All E.R. 452). Consequently, the fact that certain decisions are subject to judicial review in England, does not necessarily make them subject to review in Cyprus for, if they are of an administrative character, in Cyprus they are exclusively subject to the revisional jurisdiction of the Supreme Court under Article 146.1.

The nature of the two jurisdictions, the one under Article 146.1 and that under Article 155.4, are dissimilar in origin, procedure and purpose. A right to review, under Article 146.1, vests as of right in a person affected thereby, provided a recourse is taken within the time limit of 75 days set down in Article 146.3, whereas judicial review by way of prerogative

writs is always a discretionary remedy; no specific time limit is set for taking proceedings under Article 155.4 but, in the face of unreasonable delay to move the Court, the Court may, in the exercise of its discretion, refuse to take cognizance of the proceedings.

Proceedings under Article 146.1 are modelled on the continental principles of administrative law, primarily intended to control administrative action in the interests of legality and proper administration. The primary purpose of judicial review by means of prerogative writs is to ensure that inferior tribunals operate within the limits of their jurisdiction and exercise their powers within the limits set by law. The impress of finality attaching to decisions of inferior tribunals, is conditional on the observation of the law. If this condition is not satisfied, the Queen's Bench Division of the High Court of Justice has a right to interfere with the decision - *Tehrani v. Rostron* [1971] 3 All E.R. 792 (C.A.).

In earmarking the jurisdiction of the Supreme Court under Article 155.4, it is instructive to identify the characteristics that distinguish judicial from administrative proceedings. The duty to act fairly, binds all public bodies alike, whether exercising judicial or administrative powers. - *Payne v. Lord Harris* [1981] 2 All E.R. 842.

An authoritative pronouncement on the characteristics of judicial proceedings was made by *Griffiths C.J.* in *Huddart Parker & Co. (Proprietary) Ltd.* v. *Moorehead* - VIII C.L.R. 357. Judicial, in the opinion of the learned Chief Justice, are proceedings where the tribunal is concerned to decide questions between the subjects or between the subjects and the Sovereign, in relation to life, liberty and property. A valuable decision for the identification of the characteristics of judicial power is that of *United Engineering Workers Union v. Devanayagam* [1967] 2 All E.R. 367. The House of Lords decided by majority that, the Office of the President of the Labour Tribunal was not a judicial one on a proper analysis of his duties. His duties were more in the nature of an arbitrator who does not normally discharge judicial functions. It was observed that no exhaustive test can be laid down to determine the character of the proceedings. In every case, the nature of the powers vested in the

decision-making body and, the manner and mode of their exercise, must be scrutinized in order to determine whether they are of a judicial character. An interesting analysis of the characteristics of judicial power is made by *Lord Devlin* in his dissenting judgment in *United Engineering Works Union*, supra.

The decision of the Court of Appeal in *Guilfoyle v. Home Office* [1981] 1 All E.R. 943, lays emphasis on the status of the decision-issuing body as an important indicator of the nature of the powers exercised. It was decided that the European Commission of Human Rights is not a judicial but an investigatory body. Judicial proceedings are, par excellence, it was pointed out, proceedings before a Court of judicature in contrast to proceedings before bodies or tribunals exercising administrative or investigatory functions.

A universally acceptable attribute of judicial power is that it cannot be delegated - *R. v. Gateshead Justices* [1981] 1 All E.R. 1027 (D.C.). The primary purpose of judicial proceedings is to determine the rights of the parties under the law and resolve their dispute by reference thereto. In administrative proceedings the promotion of public interest in a given area is always a fundamental consideration - *R. v. Secretary of State for Environment* [1976] 3 All E.R. 90 (see judgment of Lord Denning M.R.).

The decision of the Court of Appeal in *R. v. Hull Prison Board of Visitors* [1979] 1 All E.R. 701, singles out one characteristic that inevitably distinguishes judicial from administrative proceedings. It is this: Judicial proceedings are concerned with the application of the general law of the land. Consequently, it was held that the decision of the Prison Board of Visitors, an independent body, did not involve the exercise of judicial power, notwithstanding the implications of its decisions and the deprivation consequent thereupon, on the liberty of a prisoner. The Board of Visitors was a domestic tribunal primarily concerned to promote internal discipline among prisoners. It was not concerned to lay down or apply the general law of the land.

The above authorities are highly instructive in delineating the jurisdiction of the Supreme Court under Articles 146.1 and

155.4, especially in view of the decision in *Sofoclis Demetriades and Son and Another v. The Republic* (1969) 3 C.L.R. 557, laying down that, in Cyprus, the principal consideration for classifying a decision, is the nature of the decision and not the character of the organ issuing it. The above authorities throw light on the principles that should guide us in identifying the nature of a given decision. Two are the dominant characteristics of judicial power -

(a) It must emanate out of a Court of judicature and

(b) the decision must aim at defining the rights of the parties under the general law.

Applying the aforesaid principles to the facts of the case, it becomes apparent that the decisions of the Disciplinary Committee of the Medical Council have none of the characteristics of a judicial decision. The body issuing them is certainly not a Court of judicature but a domestic tribunal, primarily concerned with the upkeep of a code of ethics among medical practitioners. Its decisions have all the characteristics of administrative decisions; they aim to promote proper standards among the medical profession within the context of a domestic code of conduct. And, as explained, unlike advocates, the medical profession has no immediate affinity to the administration of justice. Therefore, in agreement with the learned trial Judge, we rule that the decisions complained of are not amenable to judicial review by means of prerogative writs under Article 155.4 of the Constitution.

The appeal is, therefore, dismissed. Let there be no order as to costs.

Appeal dismissed. No order as to costs