

1986 September 18

[A. LOIZOU, SAVVIDES, PIKIS, JJ.]

EFTHYMIOS SIMILLIDES,

Appellant,

v.

NICOLAOS NEOPHYTOU,

Respondent.

(Civil Appeal No. 6782).

5 *Constitutional Law—Attorney-General of the Republic—Constitution, Articles 112.2 and 113.1—Civil Proceedings—Action for defamation against a civil servant—Tortious acts alleged to have been committed in the course of defendant's (respondent's) employment or duty—Plaintiff (appellant) reserved his right against the Republic under Article 172 of the Constitution—Attorney-General had a legitimate interest, a right and a duty to appear and defend such civil servant in the said action—There is nothing*
10 *in the Constitution or any other law precluding the Attorney-General from doing so—Attorney-General entitled to do so through one of his officers subordinate to him.*

15 *The Advocates Law, Cap. 2 as amended—Sections 11 and 2—Law Officers—Right to practise as an advocate—Distinction between Law Officers and other Officers of the Government authorised by the Attorney-General to appear, plead and act in any proceedings.*

20 *Civil Procedure—The Civil Procedure Rules, Order 1, Rule 5—Variation of Forms provided by the Rules—Retainers (Order 16, Rule 11 and Form 12A)—Retainer filed together with a Memorandum of Appearance by a Law Officer—Crossing out both alternatives as to remuneration—In the light of Order 1, Rule 5 such retainer not irregular.*

Attorney-General—Whether he can appear and defend either personally or through one of his officers an action against a civil servant—See Constitutional Law, ante

The appellant instituted an action against the respondent, who, at all material times, was a Public Officer, 5
namely a Specialist Psychiatrist serving at the Athalassa Government Psychiatric Institutions, claiming damages for libel allegedly contained in a letter by the respondent to the Welfare Officer of Paphos and damages for an oral 10
slander allegedly committed by the respondent on or about the middle of October, 1981. In the amended statement of claim it is expressly stated that the defendant did what he did in his official capacity as a Government Psychiatrist and that the appellant reserves his right to pursue his claims against the Republic under Article 172 15
of the Constitution.

The respondent appointed Mr. Liveras as his advocate to defend him in the above action and a Memorandum of Appearance was filed with the District Court of Paphos. 20
After the exchange of pleadings between the parties was completed, a second Memorandum of Appearance was filed to the effect that the respondent would be defended by one of the Counsel for the Republic, namely Mr. Achilleas Frangos, who signed the memorandum “for 25
the Attorney-General of the Republic”. Attached to the second memorandum there was a retainer in the usual Form 12A, but both alternatives as regards remuneration were struck off.

The appellant applied for an order discharging and/or setting aside and/or striking off the second memorandum 30
of appearance. The application was eventually dismissed and as a result the present appeal was filed.

Held, dismissing the appeal, Pikis, J. dissenting:
(A) *Per A. Loizou, J.:* (1) The respondent (defendant in the 35
action) is alleged to have committed the civil wrong of defamation in the course of his employment with the Republic and in the exercise of his official duties, whilst the appellant (plaintiff in the action) reserved his rights under Article 172 of the Constitution against the Republic.

There is no doubt that the issues of liability and the amount of the compensation would be brought up and contested in these proceedings. It follows that the Attorney-General of the Republic had a legitimate interest, a right and a duty to defend one of the officers of the Republic for the civil wrong of defamation.

(2) The Attorney-General was entitled to act through one of her Officers subordinate to her as provided by Article 113(2) of the Constitution. Support for this proposition can be found in the provisions of the Advocates Law, Cap. 2, Section 11*, as amended, where a differentiation is made between a Law Officer, who can practise as an advocate without limitations and an Officer of the Government, who is authorised to appear and plead in any proceedings, but whose authorisation in appearing for an Officer of the Government is limited to cases where such officer is a party in his official capacity. Furthermore in the definition of "practising advocate" in section 2 of the same law a Law Officer is once more included without any limitations.

(3) There is, therefore, nothing in the Constitution or in any other law precluding the Attorney-General or a Law Officer acting on his behalf to appear for a defendant in litigation. No doubt this right is exercised in proper cases and where there is an interest in the outcome of the proceedings likely to affect the Government or its officers as in the present case.

(4) The argument advanced by the appellant that the retainer filed was not the proper one as both alternatives as to remuneration were struck off (Order 16, Rule 11 of the Civil Procedure Rules and Form 12A) is not a valid one, because under Order 1, Rule 5 of the same Rules the Forms provided by the Rules may be used with such variations as may be necessary to suit the case and, where not applicable, even forms of the like character may be used.

(B) *Per Savvides, J.*: (1) The question in this case is not whether the Attorney-General has the right to appear

* The relevant part of this section is quoted at pp. 373-374 post.

and defend any proceedings instituted against private individuals in their personal capacity—a question that is left open—but whether he has the right to defend either personally or through his officers, civil servants when sued in their official capacity in the course of the exercise of their duties, where it is alleged that the Republic is also responsible for their acts though not made a party to the proceedings. 5

(2) I agree with the reasons given by Loizou, J. as to the position of the Attorney-General and his powers to defend proceedings against civil servants in their official capacity. 10

(3) It is clear that the respondent was not sued in respect of a tort committed in his personal capacity outside the scope of his employment, but in respect of alleged tortious acts alleged to have been committed in his official capacity and/or in the exercise of his duties as a Government Psychiatrist. This view is strengthened by the fact that the appellant reserved his right to proceed under Article 172 against the Republic as well. In the light of such allegations the Attorney-General had a right and a duty to defend the respondent, especially in view of the fact that a request for such intervention was made to the Attorney-General by the Ministry of Health. 15
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Appeal dismissed. Costs against appellant. 25

Cases referred to:

Georghiou v. The Attorney-General (1982) 1 C.L.R. 938;

Alexandrou v. The Attorney-General (1983) 1 C.L.R. 241;

Phedias Kyriakides v. The Republic, 1 R.S.C.C. 66; 30

Vrahimi and Another v. The Republic, 4 R.S.C.C. 121;

Midland Bank Trust Co. Ltd. v. Hett, Stubbs and Kemp [1978] 3 All E.R. 571;

G. and K. Ladenbau v. Crawley and de Reya [1978] 1 All E.R. 682; 35

Rondel v. Worsley [1967] 3 All E.R. 993;

Saif Ali v. Sydney Mitchell and Co. [1978] 3 All E.R. 1033;

Myers v. Elman [1939] 4 All E.R. 484;

Kelly v. London Transport [1982] 2 All E.R. 842;

5 *Ross v. Caunters* (a firm) [1979] 3 All E.R. 580.

Appeal.

10 Appeal by plaintiff against the judgment of the District Court of Paphos (Anastassiou, S.D.J.) dated the 14th June, 1984 (Appl. in Action No. 786/82) whereby plaintiffs application for an order directing the discharge and/or setting aside and/or striking off, of the memorandum of appearance filed by the Attorney-General of the Republic on 5.9.83, was dismissed.

A. *Eftychiou*, for the appellant.

15 A. *Frangos*, Senior Counsel of the Republic, for the respondent.

Cur. adv. vult.

The following judgments were read:

20 A. LOIZOU J.: In proceedings instituted in the District Court of Paphos against the respondent, a Government Psychiatrist in the Psychiatric Institutions of Athalassa there were claimed as set out in the prayer for relief, paragraph 14 of the statement of claim:

25 (a) twenty-five thousand pounds "as damages and or otherwise on account that the defendant on or about the 24th October 1981, by letter prepared and sent on instructions from him and without reason to do so to the Welfare Officer at Paphos, in which falsely and maliciously wrote and published against the plaintiff
30 a defamatory publication presenting the plaintiff as a procurer for prostitution of his wife, as having attempted to kill his wife and further the plaintiff not only he was not able to discharge the duties of a public officer, but on the contrary that he is dangerous to public safety and that the defendant having
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knowledge of the whole situation intended to file an affidavit for the Court to order the custody of the plaintiff in the Psychiatric Institutions of Athalassa and so by this serious defamatory publication to the officer in charge of the Welfare Office at Paphos he ran and still runs the risk to lose his freedom, his professional career, his honour and self respect, that is everything, and be brought to hatred, contempt and ridicule by the society also.

- (b) that the defendant be adjudged to damages and otherwise for oral slander which the defendant committed on or about the middle of October, 1981, against the plaintiff with the defamatory phrases which he said and published against the plaintiff, namely to Androulla Papadopoullou of Paphos and to others whose names are not known to the plaintiff and without reason for this, that the plaintiff is a procurer of his wife, that he attempted to kill his wife and that he is dangerous to public safety and that he must be locked up at the Athalassa Psychiatric Institutions and that the defendant himself knew, as he declared that the plaintiff had been in the past an inmate of the Athalassa Asylum where he has for him a special card establishing all defamatory matters he says and maliciously publishes against the plaintiff."

In paragraph 5 of the Statement of Claim it is asserted that "the defendant is a Specialist Psychiatrist and at all material times he serves at the Athalassa Government Psychiatric Institutions".

The letter complained of, of the 24th October, 1981, which forms part of paragraph 6(b) of the Statement of Claim is an official letter headed "Psychiatric Institutions Athalassa" is addressed to the District Welfare Officer Paphos and is signed by the Social Welfare Officer.

The defendant on the 12th October 1982, appointed Mr. Liveras as his advocate to defend him in this action and a Merorandum of Appearance with a duly filled in and signed retainer was filed with the District Court of Paphos. The exchange of pleadings between the parties was

completed and on the 5th September 1982, a second Memorandum of Appearance was filed to the effect that the said defendant would be "defended by one of the Counsel of the Republic: Achilleas Frangos" and that the address of service is the office of the District Officer Paphos. It is signed by Mr. "Achilleas Frangos Senior Counsel of the Republic for the Attorney General of the Republic". Attached thereto there was a retainer in the usual Form No. 12A as prescribed by Order 16, rule 11, by which the defendant authorised "the Attorney General of the Republic" of Nicosia to defend him in Action No. 786/82 filed in the Registry of Paphos in the District Court of Paphos. Both alternatives as regards remuneration, namely that there has been no express agreement with the said advocate in regard to his remuneration, and that he would pay him in accordance with the scales in the Civil Procedure Rules and the other that the defendant had made "the following express agreement with the said advocate in regard to his remuneration", were struck off.

On the 27th January, 1984, an application was filed by the plaintiff seeking:

(1) An Order of the Court directing the discharge and/or setting aside and/or striking off, of the Memorandum of Appearance sent to the Registrar by the Attorney General of the Republic through Senior Counsel of the Republic Mr. A. Frangos and filed by the Registrar on 5th September 1983 on the following grounds:

- (a) The Attorney-General of the Republic has no right to appear and defend the defendant in the action.
- (b) The Attorney-General has no legitimate interest to appear for the Republic as defendant in the aforesaid action.
- (c) The Attorney-General has no legal right, locus standi, to appear as a litigant in the aforesaid action.
- (d) The filing of a Memorandum of Appearance by the Attorney-General for the defendant in the aforesaid action was made contrary to, the Constitution, Articles 112, 113, 114, the existing Legislation and/or Regulations and in particular to the Rules of Court

1955, Order 16 rules 1-11, Order 63, rule 2, Order 9 rules 4 and 11 and Section 57 of the Courts of Justice Law 14 of 1960 and the Law in general.

(e) There is no reason in the public interest for the Attorney-General to appear in the aforesaid action. 5

(2) Any other relief that in the circumstances the Honourable Court would deem fit and proper.

(3) The costs of the application.

The application is based on the Civil Procedure Rules, hereinabove mentioned, and in addition to Order 64 Rules 1-4 section 30 and 57 of the Courts of Justice Law 1960 (Law No. 14 of 1960) and Articles 163 and 188 of the Constitution and the Inherent Powers of the Court. 10

It was found by the learned trial Judge that it was asserted on behalf of the Attorney-General that:- 15

- (a) the Ministry of Health had asked the Attorney-General of the Republic to defend the defendant.
- (b) In the amended statement of claim, paragraph 5(6) (b) 8 and 13 it is expressly stated that the defendant did what he did in his official capacity as a Government Psychiatrist. 20
- (c) In paragraph 13 the plaintiff reserves his right to pursue his claims against the Republic under Article 172.
- (d) It is the contention of Counsel of the Republic that the Republic must defend its Officers and Officials for something they do in the exercise of their duties as Public Officers. 25

The learned Senior District Judge summed up the position as follows: 30

“(1) I see no problem if a defendant wishes to be defended by two advocates and there is no need for the first memo to be withdrawn in order to file a second one.

5 (2) Although the Republic is not a party to these proceedings, the Attorney-General of the Republic has locus standi in view of the fact that the defendant did what he did, in his official capacity as a Government Psychiatrist and this is clearly stated in the statement of claim.

10 (3) The plaintiff in paragraph 13 of the statement of claim reserved his right to claim damages against the Republic under s. 172; therefore, the Republic through the Attorney-General of the Republic has a legitimate interest to defend at some stage, although it seems somewhat premature today.

15 (4) It is the duty of the Republic to defend its servants and officers when they are sued for something that they did in their official capacity when exercising their duties.

20 (5) Although instead of filing a fresh memo of appearance it would be better if notice of additional advocate should have been filed still, I feel that on an overall consideration, no detriment or damage or prejudice will be caused to the plaintiff's case if the defendant is defended by the Attorney-General of the Republic as well."

25 He then dismissed the application with no order as to costs "in view of the novelty of the points raised."

As against this Order the present appeal was filed.

30 It was argued on behalf of the appellant that the Attorney-General of the Republic has no right to appear in proceedings like the present one and that his functions are defined in Articles 112(2) and 113(1) of the Constitution as being in effect the legal adviser of the State. Furthermore that under Section 57 of the Courts of Justice Law, 1960, this is not an action against the Republic as the action was not instituted against the Attorney-General of the Republic as defendant. Furthermore our attention was drawn to Section 4 of Law No. 52 of 1985, amending Section 17 of the Advocates Law Cap. 2 by addition thereto subsection 9 which reads as follows:

“For the purposes of this section receiving less remuneration than the minimum prescribed by the Regulations in force at the time, constitutes a disciplinary offence.”

A retrospect into the matter is helpful. Before the establishment of the Republic there was a Crown immunity in tort, but it was never extended to its servants personally but as stated in H.W.R., Wade, Administrative Law, 5th edition at p. 701:-

“The Crown did in fact assume the liability which could not lie upon it in law by regularly defending actions brought against its servants for torts committed by them in their official capacities. The legal process was issued solely against the individual servant, but his defence was in practice conducted by the Crown, and if damages were awarded they were paid out of public funds. Government departments did their best to be helpful in making this practice work smoothly, and if there was any doubt as to which servant to sue they would supply the name of a suggested defendant, known as a ‘nominated defendant’ ”.

The position in England was changed by the Crown Proceedings Act 1947. The position in Cyprus was the same to the extent that there was immunity of the Crown as regards Civil Wrongs. The liability of the State in Civil Wrongs was brought about by Article 172 of the Constitution which provides:

“The Republic shall be liable for any wrongful act or omission causing damage committed in the exercise or purported exercise of the duties of officers or authorities of the Republic. A law shall regulate such liability.”

Section 7 of the Courts of Justice Law 1968 provides that such proceedings against the Republic are instituted against the Attorney-General of the Republic as defendant.

In the present case, however, the plaintiff has instituted proceedings against the officer who is alleged to have been

acting in his official capacity and/or in the exercise of his duties as a Government Psychiatrist whilst the plaintiff reserved his rights under Article 172 of the Constitution. Without commenting on the course followed by counsel for the plaintiff there is no doubt that the issues of liability and the amount of compensation would be brought up and contested in these proceedings. There existed, therefore, for the Attorney-General of the Republic a valid legitimate interest, a right and a duty to defend one of the officers of the Republic, for a civil wrong of defamation, either both slander or libel or either of them alleged to have been committed in the course of his employment and in the exercise of his official duties. In the public interest the Attorney-General of the Republic was therefore entitled to act through one of her Officers, subordinate to her as provided by Article 113(2) of the Constitution. Support for this proposition can be found in the provisions of the Advocates Law, Cap. 2 Section 11, as amended, which in so far as relevant provides:-

20 "11(1) No person shall practise as an advocate unless -

(a) He is enrolled as such under this Law or under any other Law previously in force; and

25 (b) he shall have taken out an annual licence in such forms as the Supreme Court may from time to time prescribe (hereinafter called the 'annual licence') and

(c) he has paid to the Advocates Pension Fund all sums due by him:

30 Provided that nothing in this subsection shall apply to -

(a) any Law Officer;

35 (b) any officer of the Government authorised by the Attorney-General of the Republic to appear, plead and act in any proceedings to which the Republic, the Government or any officer of the Government in his official capacity is a party.

(2)

Under Section 2 of the Law 'practising advocate', means, an advocate who is entitled to practise under the provisions of subsection 1 of section 11 and who having as a principle profession that of a practising advocate holds himself out as ready so to do and includes a Law Officer who is an advocate." 5

It is clear from the above that a differentiation is made between a Law Officer who can practise as an advocate without limitations and an Officer of the Government who is authorised to appear and plead in any proceedings but whose authorisation in appearing for an Officer of the Government, such officer has to be a party in his official capacity. Furthermore in the definition of "practising advocate" in section 2 of the Law a Law Officer is once more included without any limitations. 10 15

There is therefore nothing in the Advocates Law or in the Constitution or in any other Law precluding an Attorney-General or a Law Officer acting on his behalf to appear for a defendant in litigation. 20

No doubt this right of appearance is exercised in proper cases and where there is an interest in the outcome of the proceedings likely to affect the Government of the Republic or its officers as in the present case.

It was argued on behalf of the appellant that the retainer filed was not the proper one in view of the fact that both alternatives as to remuneration were struck off, and that the compliance with the form is imperative in view of the provisions of Order 16 rule 11 which in so far as relevant provides as follows: 25 30

"11. Where an advocate enters appearance on behalf of a defendant who lives in Cyprus and in sued upon a claim relating to more than £25, the memorandum shall not be received by the Registrar, nor shall the duplicate thereof be dated, signed and sealed by him, unless the memorandum delivered to the Registrar is accompanied by a retainer in writing in Form 12A attested, where the defendant is illi- 35

terate, by a Registrar, certifying officer or two competent witnesses not being advocates' clerks".

To my mind this argument cannot stand as under Order 1 rule 5. the forms provided by the Rules may be used
5 with such variations as may be necessary to suit the case and where not applicable, even forms of the like character may be used. This is expressly provided by Order 1 rule 5 which reads:

10 "5. The forms in Appendix A, shall where applicable be used with such variations as may be necessary to suit the case and where not applicable forms of the like character may be used."

For all the above reasons the appeal is dismissed with costs.

15 SAVVIDES J.: The question which has to be answered in this appeal is whether the Attorney-General of the Republic had the right to appear and defend the defendant in this action in which the appellant-plaintiff claims damages in respect of an alleged libel contained in a letter
20 addressed to the Welfare Officer of Paphos and a slander committed by alleged communications to such officer and others of defamatory matters concerning the appellant-plaintiff.

The appeal is directed against the dismissal by the
25 Senior District Judge of Paphos of an application on behalf of the appellant-plaintiff whereby he was praying for an order of the Court directing the discharge and/or setting aside and/or striking off the memorandum of appearance entered for the defendant by the Attorney-General of the
30 Republic through a Senior Counsel of the Republic.

The respondent-defendant is a specialist Psychiatrist and at all material times he was serving at the Athalassa Government Psychiatric Institutions and the appellant-plaintiff is a civil servant holding the post of Assistant District Inspector in the District of Paphos.
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It is alleged that the libel complained of is contained in a letter sent by the respondent to the District Welfare Officer of Paphos containing defamatory matters concerning

the appellant and also that some time later the respondent in his capacity as a Government Psychiatrist communicated to the District Welfare Officer and others defamatory matters concerning the appellant. It is also alleged that the said torts were committed by the respondent in his official capacity in the exercise of his duties as a Government Psychiatrist. The respondent-defendant entered an appearance through a counsel of his choice and at the same time he informed the Ministry of Health about the proceedings, which in its turn requested the Attorney-General to defend the proceedings in view of the allegation contained therein that the defendant in committing the alleged torts was acting in his capacity as a Government Psychiatrist. The Attorney-General through one of his Senior Counsel also entered appearance on behalf of the defendant and the memorandum of appearance was supported by a retainer signed by the respondent. Counsel for appellant-plaintiff filed an application for an order striking out such memorandum of appearance. The grounds advanced by counsel in support of his application were that -

- (a) The Attorney-General of the Republic has no right to appear and defend the defendant in the action.
- (b) The Attorney-General has no legitimate interest to appear for the Republic as defendant in the aforesaid action.
- (c) The Attorney-General has no legal right, locus standi, to appear as a litigant in the aforesaid action.
- (d) The filing of a Memorandum of Appearance by the Attorney-General for the defendant in the aforesaid action was made contrary to the Constitution, Articles 112, 113, 114, the existing legislation and/or Regulations and in particular to the Rules of Court 1955, Order 16 rules 1-11, Order 63, rule 2, Order 9 rules 4 and 11 and Section 57 of the Courts of Justice Law 14 of 1960, and the Law in general.
- (e) There is no reason in the public interest for the Attorney-General to appear in the aforesaid action.

5 The application was opposed on behalf of the Attorney-General. The Opposition was supported by an affidavit sworn by the respondent-defendant in which it is stated, inter alia, that according to the statement of claim the acts attributed to the respondent are alleged to have been committed by him in the exercise and/or for the purpose of furtherance of his duties as a Government specialist Psychiatrist reserving his rights against the Republic in this respect.

10 A perusal of the statement of claim filed in this case tends to support the allegations contained in the affidavit of the respondent filed in support of the Opposition. In fact paragraph 13 of the statement of claim reads as follows :

15 "The defendant carried out the said wrongful acts against the plaintiff in the performance of his duties and/or in the exercise of his duties as a Government Psychiatrist and the plaintiff reserves his right under Article 172 of the Constitution against the Republic."

20 The learned trial Judge in reaching his conclusion that the application could not succeed gave his reasons as follows:

25 "(1) I see no problem if a defendant wishes to be defended by two advocates and there is no need for the first memo to be withdrawn in order to file a second one.

30 (2) Although the Republic is not a party to these proceedings, the Attorney-General of the Republic has locus standi in view of the fact that the defendant did what he did, in his official capacity as a Government Psychiatrist and this is clearly stated in the statement of claim.

35 (3) The plaintiff in paragraph 13 of the s/c reserved his right to claim damages against the Republic under s. 172; therefore, the Republic through the Attorney-General of the Republic has a legitimate interest to defend at some stage, although it seems somewhat premature today.

(4) It is the duty of the Republic to defend its servants and officers when they are sued for something that they did in their official capacity when exercising their duties.”

The reasons given by the learned trial Judge under paragraphs 2, 3 and 4 of his judgment are supported by the allegations contained in the pleadings and he was fully justified bearing in mind such facts to reach his conclusion that the application could not succeed.

It is clear that in the present action the defendant is not sued in respect of a tort committed by him in his personal capacity outside the scope of his employment but it is alleged that the said tortious acts had been committed in his official capacity and/or in the exercise of his duties as a Government Psychiatrist and this is further strengthened by the fact that the plaintiff reserved his right under Article 172 of the Constitution to proceed against the Republic as well. In the light of such allegations the Attorney-General had a right and a duty to defend a civil servant in respect of torts alleged to have been committed by the servant in the exercise of his official duties, especially in view of the fact that a request for such intervention was made to him by the Ministry concerned. Therefore, being a matter of public interest the Attorney-General was entitled to appear in these proceedings through one of her officers to defend the case.

I had the opportunity of reading the judgment of my learned brother A. Loizou and I agree with the reasons given by him as to the position of the Attorney-General of the Republic and his powers to defend proceedings instituted against civil servants in their official capacity and I have nothing useful to add in this respect. As I said at the beginning the question which poses for consideration is not whether the Attorney-General either personally or through his officers has the right to appear and defend any proceedings instituted against private individuals in their personal capacity but to defend civil servants when sued in their official capacity in the course of the exercise of their duties, where it is alleged that the Republic is also responsible for their acts though not made a party to the proceedings. The answer to this question has already been

given and I leave open the question as to whether the Attorney-General personally or through his officers has the right to appear in any other private proceedings in which the Government is not involved as such question
5 does not arise in the present case.

I agree with the result reached by my learned brother A. Loizou, J. that this appeal should be dismissed and is hereby dismissed accordingly with costs.

10 PIKIS J.: Does the Attorney-General have the right or a duty to represent a civil servant in an action raised exclusively against him for the recovery of damages for a tort allegedly committed in the exercise or purported exercise of his duties? The determination of the appeal turns on the answer to the above question. The issue is novel in
15 the sense that it is not covered by authority or illuminated by dicta suggesting an answer.

The respondent, a medical officer in the Psychiatric Services, made a statement concerning the appellant, in a written communication with the Welfare Office, to which
20 the appellant took exception and raised the present proceedings for the recovery of damages for defamation. The respondent defended the action and entered an appearance through Mr. Liveras, an advocate in private practice.

Also, appearance was entered on his behalf by the Attorney-General through one of her law officers, namely
25 Mr. A. Frangos. The appearance on behalf of the Attorney-General was justified before the District Court as duly warranted by the status of the defendant and the context in which the tort was allegedly committed, that is, in the
30 course of his duties. The trial Court found the appearance in order notwithstanding the non joinder of the Republic as a party to the proceedings, in view of -

- (a) The capacity of the defendant, and
- (b) the reservation of the right of the plaintiff to raise
35 separate proceedings against the Republic under Article 172 of the Constitution.

Further, the trial Court acknowledged a right to the Republic to defend through the Attorney-General its ser-

wants for acts committed "in their official capacity when exercising their duties".

Counsel for the appellant argued before us the appearance was irregular and ought to be invalidated for lack of competence on the part of the Attorney-General to represent in her official capacity anyone other than the bodies and persons she is entrusted to represent "virtute officio" in accordance with Article 113.1 of the Constitution. Mr. Frangos claimed a right on the part of the Attorney-General to represent any civil servant for acts committed in the course of his duties notwithstanding the absence of proceedings against the Republic.

English practice is of little, if any, help because the liability of the Republic for wrongs committed by public officers in the exercise or purported exercise of their duties, rests on a wholly different basis than the liability of the Crown for similar acts under the English common law. Before the enactment of The Crown Proceedings Act 1947, the Crown was not liable in law for acts of its servants, a corollary of the legal fiction that the Crown could do no wrong. In order to circumvent the rigours of this rule and mitigate the ill effects stemming from its strict application, the Crown assumed responsibility for acts of its servants done in the course of their duty and defended, as a rule, proceedings against them. We need not debate the position of the Crown after the abolition of the above rule by the enactment of the Crown Proceedings Act for the liability of the Republic for acts of its servants is not modelled or fashioned on the principles governing the liability of the Crown for similar acts. Such liability is defined by a specific article of the Constitution, Article 172, and regulated thereby. Examination of the framework of the liability of the Republic under Article 172, is necessary in order to determine whether there is any justification in law for the defence by the Attorney-General of proceedings against civil servants for acts committed in the exercise of their duties. Is the outcome of such proceedings in any way binding on the Republic? Or can it prejudice in any sense the liability of the Republic?

Article 172 of the Constitution makes the Republic directly liable for acts of government servants whether

committed in the exercise or purported exercise of their duties. As judicially acknowledged, it is an original species of liability rendering the Republic liable for acts of its servants as a matter of constitutional duty. The liability of the Republic is in no way related to the doctrine of vicarious liability of English law. In *Georghiou v. The Attorney-General*¹ the Court explained liability of the Republic is not necessarily co-extensive with that of the wrongdoer. The liability of the Republic stems from the duty of government to operate within the realm of the law and the corresponding right of the citizen to insist on government according to law. The exposition of the law made in *Georghiou*, supra, was followed and applied in *Alexandrou v. Attorney-General*².

The right vested by Article 172 is self-executory, as the Supreme Constitutional Court found as a matter of fair interpretation of the provisions of Article 172, in the cases of *Phedias Kyriakides v. The Republic*³ and *Eleni Vrahimi and Another v. The Republic*⁴. What may be regulated by law, is the manner of exercise of this right, a matter for which provision was made in s. 57 of the Courts of Justice Law (Law 14/60). It provides that actions against the Republic by private litigants shall be brought against the Attorney-General. Thereafter, the Republic shall be in the same position as any other private defendant. When the Attorney-General is sued on behalf of the Republic, she is a party to the proceedings like every other litigant. Therefore, the appearance of the Attorney-General in such proceedings is that of a party thereto. Of course, the Attorney-General may prosecute or defend her cause before the Court personally or through law officers acting under and in accordance with her instructions, as provided in Article 113.2 of the Constitution.

It emerges from the above that the liability of the Republic for acts of its officers and employees is far ranging, comprehensively defined in the Constitution itself. There is

¹ (1982) 1 C.L.R. 938.

² (1983) 1 C.L.R. 41.

³ 1, R.S.C.C. 66.

⁴ 4, R.S.C.C. 121

no legal or procedural impediment to suing the Republic for acts of public officers or recovering damages for loss occasioned thereby. On the other hand, the Republic has no liability in law to meet damages, except damages adjudged in a judgment given against the Republic. The breadth of the liability of the Republic under Article 172 is such as to leave no room for extending it beyond the scope of its provisions. Observance of the rule of law lies at the core of the liability of the Republic under Article 172; and is fashioned to that end. What must next be decided is whether the powers vested in the Attorney-General entitle her to render legal assistance, including the defence of civil proceedings, to anyone other than the Republic as a corporate entity. For the answer we must turn to that part of the Constitution that defines the powers of the Attorney-General.

The powers of the Attorney-General are defined by Article 113 of the Constitution. Paragraph 1 provides that the Attorney-General shall be the legal adviser of -

- (a) the Republic,
- (b) the President and the Vice-President of the Republic,
- (c) the Council of Ministers, and
- (d) the Ministers of the Republic.

Article 113.1 does not impose a duty on the Attorney-General to defend proceedings raised against a civil servant. The competence is confined to rendering legal assistance to the Republic and its officers named therein. It may be argued that an officer may have a claim to be indemnified by the Republic for damages paid for acts committed in the exercise of his duties. Such claim to indemnify may be raised by joining the Republic through the Attorney-General as a third party. Article 172 does not bear on the relationship of the Republic with its officers. It is confined to the liability of the Republic to third parties for wrongs done by its officers. Whatever the outcome of the proceedings here under consideration may be, no liability can be attached to the Republic. If proceedings are subsequently raised against the Republic for the same acts,

the Republic will in no way be prejudiced by the outcome of the proceedings. Any judgment that may be given in this case, will be judgment in persona, solely binding upon the parties to the cause. The amenity of the Attorney-General to render legal assistance, including appearance before the Courts in virtue of her Office, is confined to the Authorities and persons specified in Article 113.

The relationship of advocate and client is regulated by the Advocates Law—Cap. 2, Regulations made thereunder and, in so far as appearance before the Court is concerned, by the Civil Procedure Rules. It is a confidential relationship; communications between client and advocate are privileged, not disclosable except at the instance of the client. As such it is irreconcilable with the public duties of the Attorney-General, one of the custodians of the rule of law under the Constitution. One need only contemplate disclosure by a public servant, of default of duty, in the course of briefing the Attorney-General for his defence in a private action against him, in order to notice the conflict between her duty to the public that requires disclosure of the confidence and disciplinary proceedings in the public interest on the one hand and, the duty to the client to treat the information confidential, on the other. The advocates Law itself rules out the possibility of a private litigant engaging for his defence anyone other than an advocate in private practice. Section 17(9) of the Advocates Law illustrates forcefully this premise of the law. It provides that no advocate can charge fees below the minimum allowed by the scale of remuneration of advocates¹. The Rules of Etiquette² are likewise fashioned on the establishment of a confidential relationship between advocate and client and a code of mutual rights and obligations, incompatible with the Attorney-General assuming in her official capacity the role of an advocate in that context. The Rules of Court on the other hand, require the execution of a retainer contractually regulating the remuneration of an advocate, as a condition precedent to his appointment, for the prosecution or defence of an

¹ (as amended by s.4 of Law 52/85).

² See, Official Gazette, Part III, Notification 536 —19.11.66.

action¹. It must not be overlooked that in Cyprus an advocate carries out the functions performed in England by solicitors and barristers. For that reason he owes to the client duties owed under the English legal system to the client by both the solicitor and barrister engaged in the conduct of litigation. A solicitor is liable to the client both in negligence, as well as in contract, by virtue of the contractual relationship established with the client². Further, the immunity of a barrister for professional negligence is not absolute³. Immunity extends to the conduct of the trial and matters intimately connected therewith. In *Saif Ali v. Sydney Mitchell & Co.*⁴ the House of Lords found that barristers' advice and the settling of pleadings attracted no such immunity. Under certain circumstances counsel may be held liable to pay the costs of the other side if by his conduct he contributes to their unnecessary incurment⁵. Thus an advocate may be liable for the rendering of advice and the conduct of the proceedings to his client and third parties⁶ too, under certain circumstances. Whereas the Attorney-General in the exercise of the functions assigned to her office is immune from liability. This is a necessary inference deriving from the provisions of Article 112.4, laying down that "she shall hold office under the same terms and conditions as a Judge of the High Court..." and those of Article 153.10 making the judge of the High Court immune from liability "for any act done or words spoken in his judicial capacity." By analogy, the Attorney-General would appear to be free from liability for acts done or words spoken in the exercise of the duties of the Attorney-General. As earlier explained, the duties of the Attorney-General are limited to those enumerated in Article 113 of the Constitution. Therefore, I am of opinion the Attorney General cannot undertake the defence of any party other than those named in Article 113.1 and, for that reason, appearance on behalf of the res-

¹ Ord. 2 r. 14 and Ord. 16 r.11 — Civil Procedure Rules, and Forms 4 and 12A, appended thereto.

² *Midland Bank Trust Co. Ltd. v. Hett, Stubbs & Kemp* [1978] 3 All E.R. 571 (Oliver, J.); *G. & K. Ladenbau v. Crawley & de Reya* [1978] 1 All E.R. 682.

³ *Rondel v. Worsley* [1967] 3 All E.R. 993.

⁴ [1978] 3 All E.R. 1033.

⁵ *Myers v. Elman* [1939] 4 All E.R. 484, 489; *Kelly v. London Transport* [1982] 2 All E.R. 842, 850-851.

⁶ *Ross v. Caunters (a firm)* [1979] 3 All E.R. 580.

pondent (defendant) in this case was irregular and must be set aside. Whether the Republic can, in an appropriate case, make funds available for the defence of an action raised against a public servant, is a matter that does not
5 call for decision in these proceedings and, for that reason, I shall not attempt to resolve it.

Appearance by the Attorney-General on behalf of the respondent is struck out; the respondent is adjudged to pay the costs of the appeal.

10 A. LOIZOU J.: In the result the appeal is by majority dismissed with costs.

*Appeal dismissed by
majority.*