BAA 8536/07

District Committee of the Tel Aviv-Jaffa District Bar Association

v.

Shlomi Halberstadt, Advocate

For the Appellant: Amos Weizmann, Adv.

For the Respondent: Assnat Bartor

The Supreme Court

[12 February 2008]

Before Justices A. Procaccia, H. Melcer, U. Vogelman

Appeal of the decision of the District Committee in the National Disciplinary Court on 17 Sept. 2007, in DCA 28/07

Facts: The Respondent, a lawyer, was convicted of drug possession in a criminal proceeding after pleading guilty to offences of possession of dangerous drugs for personal use, and the growing of a dangerous drug, in violation of sections 7(a), the end of 7(c), and 6 of the Dangerous Drugs Ordinance [New Version], 1973. The Respondent possessed a net weight of 25.68 grams of the drug cannabis, for personal use, and also unlawfully cultivated a cannabis plant weighing 5,480, and another weighing 3,420. The Respondent also admitted that he had been using cannabis for three years. As a result of the said conviction, the Respondent received a one year suspended sentence, conditional upon his not committing an offence in violation of the Ordinance for a period of three years, and was fined NIS 10,000.

Following the conviction, the Appellant applied to the District Disciplinary Court of the Tel Aviv-Jaffa District Bar Association, requesting that the Respondent be disbarred for a period of ten years, under section 75 of the Bar Association Law, 1961, as well as for his temporary suspension under section 78(b) of the Law.

The District Court ruled that the offence for which the Respondent was convicted was one of "moral turpitude", as the term is construed in section 75 of the Law. The members of the Court concurred that the Respondent's membership in the Bar should be suspended for a period of four years, of which 15 months would be effective suspension from

practice, and the remainder would be conditionally suspended for three years, on the condition that he not be convicted of an ethics violation under the Law, in circumstances of moral turpitude. On appeal before the National Disciplinary Court, the majority ruled in favor of the Respondent, and his sentence was reduced such that he was suspended from membership in the Bar for a period of four years, all of which would be conditionally suspended.

The District Committee of the Tel Aviv-Jaffa District Bar Association brought an appeal of the leniency of the sentence before the Supreme Court.

Held (*per* Justice H. Melcer): Disciplinary punishment is not intended to impose additional punishment. Its focus is upon the moral flaw in a person's conduct that may disqualify him from the legal profession. The main purpose of disciplinary sanctions is to send a message by the legal community, condemning morally tainted criminal behavior. The disciplinary aspect of a conviction of a lawyer for drug offences should, as a general rule, be expressed in a period of actual suspension from practice. A lawyer serves as an officer of the court. He is charged with aiding the court in the "pursuit of justice". This status obliges a lawyer to act impeccably as a private individual, as even inappropriate conduct outside the framework of his work may blemish his professional standing, as well as that of the entire profession. It is, therefore, inappropriate that a lawyer convicted of drug related offences continue in the usual course of work as a lawyer without a substantial period of suspension from practice. The legislature included cannabis together with drugs that are considered "hard" in the definition of a "dangerous drug". Therefore, as a rule, no distinction should be drawn between one drug and another in regard to a disciplinary conviction that should result in a suspension from practice.

The disciplinary punishment of lawyers is given to the jurisdiction of the disciplinary courts of the Bar Association. The Supreme Court will intervene in the decisions of the disciplinary courts when the disciplinary courts substantially deviate from the purposes of disciplinary punishment, or from the appropriate punishment threshold required for achieving those purposes. An entirely suspended sentence is not consistent with the appropriate punishment threshold.

Considerations of rehabilitation – that are, on occasion, appropriate for criminal punishment, and that are sometimes employed in cases of convictions for the personal use of "soft" drugs – must retreat before the public interest of protecting the legal profession, as such, and its necessary image as being opposed to drug use.

Judgment

Justice H. Melcer

1. The case before the Court is an appeal of the judgment of the National Disciplinary Court of the Bar Association (hereinafter: the National Court) in the matter of the Respondent (hereinafter: the Judgment). In that Judgment, the Respondent was sentenced to a four-year conditional suspension from membership in the Bar Association, after having been convicted of drug possession in a criminal proceeding. The Appellant is appealing the leniency of the penalty handed down in the Judgment, and seeks a harsher penalty in view of the severity of the case, and what it deems as the appropriate disciplinary policy in regard to lawyers who have been convicted of drug offences.

   We shall first review the particulars necessary for deciding the case.

The Relevant Facts

2. The Respondent was convicted before the Kfar Saba Magistrates Court (Deputy President H. Feder), upon pleading guilty to offences of possession of dangerous drugs for personal use, and the growing of a dangerous drug, in violation of sections 7(a), the end of 7(c), and 6 of the Dangerous Drugs Ordinance [New Version], 1973 (hereinafter: the Ordinance), respectively. According to the facts presented in the information, to which the Respondent entered a plea of guilty, the Respondent possessed a net weight of 25.68 grams of the dangerous drug cannabis, for personal use, in his home study, and also cultivated, without a permit, a cannabis plant weighing 5,480 grams in his garden, and a similar plant weighing 3,420 grams in his storeroom. The Prosecution and the Respondent stipulated that the relatively high weight included the weight of the plants themselves: the leaves and flowers, together with the roots and branches (although no one denies that, under the Ordinance, the entire plant constitutes a “dangerous drug”).

In the framework of his conviction, the Respondent admitted that he had been using cannabis for three years, explaining that this was due to problems in his family life. During said period, the Respondent represented clients in criminal cases, including drug cases, and even handled cases on behalf of the Public Defender's Office. During that same period, the Respondent even volunteered in various frameworks, among them some involved in combating the phenomenon of drug use among youths.

As a result of the said conviction, on 28 June 2006, the Respondent received a one year suspended sentence, conditional upon his not committing an offence in violation of the Ordinance for a period of three years, and was fined NIS 10,000.

3. Following the conviction, and after the judgment became final, the Appellant applied to the District Disciplinary Court of the Tel Aviv-Jaffa District Bar Association (hereinafter: the District Court), requesting the disbarment of the Respondent for a period of ten years, under section 75 of the Bar Association Law, 1961 (hereinafter: the Law), the relevant part of which states as follows:

> Where an attorney has been convicted of a criminal offense in court … in a final judgment, a District Disciplinary Court may, upon the application of a complainant, impose on him one of the penalties mentioned in Section 68, if it finds that in the circumstances of the case the offense involves moral turpitude.

In addition, the Appellant requested the Respondent's temporary suspension under section 78(b) of the Law.

4. The District Court ruled that the offence for which the Respondent was convicted was one of "moral turpitude", as the term is construed in section 75 of the Law. As for the disciplinary punishment, the members of the Court concurred that the Respondent's membership in the Bar should be suspended for a period of four years, but disagreed as to whether part of the said punishment should be effective suspension from practice, or whether a conditionally suspended penalty would suffice. The presiding judge, Advocate Arie Moskona, was of the opinion that the Respondent should be suspended from practice for 15 months, and that the remainder of the sentence should be conditionally suspended. As opposed to that, Advocate Noam Shilo was of the opinion that the Respondent should

not be suspended from practice for any effective period, whereas Advocate Roni Golan was of the view that two-and-a-half or the four years should constitute effective suspension, while the remainder (one year and a half) should be conditionally suspended. In light of the said disagreement, the court ruled, in accordance with section 69A of the Law, that the opinion of Advocate Golan should be deemed as concurring with the opinion of the presiding judge, Advocate Moskona. As a result, the Respondent was suspended from membership in the Bar for a period of four years, of which 15 months would be effective suspension from practice, and the remainder would be conditionally suspended for three years, on the condition that he not be convicted of an ethics violation under the Law, in circumstances of moral turpitude. It was further ruled that the sentence would commence only upon the judgment becoming final.

5. Both parties appealed the decision of the District Court. The Appellant argued against the leniency of the sentence, whereas the Respondent was of the opinion that his sentence was excessive. The National Court, by majority decision (Advocates Doron Strikovsky and Ilan Dessau), granted the Respondent's appeal and nullified the element of effective suspension from practice, over the dissent of the presiding judge (Advocate Mibi Moser), who was of the opinion that the judgment of the District Court should be upheld. The resultant decision was, therefore, that the Respondent would be suspended from membership in the Bar for a period of four years, all of which would be conditionally suspended, and that the decision would take effect when the judgment became final (in accordance with section 72 of the Law, as it was then worded).

   That is the basis for the appeal before this Court by the Tel Aviv District Bar Association.

6. The Appellant argues that, in light of the severity of the offences for which the Respondent was convicted, it would be appropriate that he be disbarred for a period of ten years, if not permanently (the Court saw the latter as broadening the scope of the Appellant's argument in the lower courts, and it was, therefore, disallowed). The Appellant explained its request for what it deemed a more severe disciplinary penalty in this case by the need to prevent the sending of an overly lenient message to the members

of the legal profession and the general public in regard to lawyers convicted of drug-related offences. The Appellant further directed our attention to the circumstances of the offences, as described in paragraph 2 hereinabove, and argued that they testified to the severity of the acts, which demands harsher disciplinary punishment.

As opposed to that, the Respondent relies upon the majority opinion of the National Court, and asks that we refrain from intervening in the result.

7. After hearing the arguments of the attorneys for the parties, we suggested that they confer – in view of comments that we made in the course of the proceedings – in order to try to arrive at an agreement as to the punishment. After some time, we were informed that the consultations were unsuccessful, and we were, therefore, asked to address the matter on the merits, as I shall do presently.

Discussion and Decision

8. Having considered the arguments of the parties and reviewed the material they presented, it is my opinion that the appeal should be granted in part, such that the Respondent will be disbarred for a period of 48 months, of which 15 months would be effective suspension from practice, and the remainder would be conditionally suspended as set out in paragraph 20 below (according to the terms recommended by the presiding judge of the National Court, Advocate Mibi Moser, in his dissenting opinion in the judgment under review).

   I will now set out the reasons that have led me to this conclusion.

9. The principles grounding the disciplinary punishment of lawyers will serve as the starting point for this examination. These principles will set the course for examining the special case of the appropriate disciplinary punishment in a situation of the conviction of a lawyer for drug offences related to personal use. We would note that we will not address the question of whether the offences for which the Respondent was convicted involved

moral turpitude, inasmuch as that issue was decided by the lower courts, and the Respondent – rightly – did not take issue with that conclusion. The words of then Justice A. Barak in BAA 2579/90 *District Committee of the Tel Aviv-Jaffa District Bar Association v. Anonymous*, 48(iv) *P.D.* 729, 734 (1991) (hereinafter: the *Anonymous* case) are apt in this regard:

> As a part of the justice system, and as a partner of the court in the judicial process, a lawyer must be true to the laws of the state, and exhibit professional and ethical conduct appropriate to the profession, and to the trust that the client, the court, and the public place in a lawyer. Therefore, an offence against the laws of the state that displays a lawyer's contempt and disrespect for the law can be deemed one of moral turpitude. An offence testifying to a defect of character, or a lack of self control, or a warped ethical view of the role of a lawyer and of the law in society can be deemed an offence of moral turpitude.
> (And see: Gavriel Kling, *Legal Ethics* (2001), pp. 513-518 (hereinafter: *Kling*)).

10. It has, in the past, been held on more than one occasion that disciplinary punishment serves *different* purposes from those normally served by criminal punishment. As then Justice A. Barak wrote: "A person convicted of a criminal offence is punished by the court that convicted him … It is not the role of the Bar Association to impose additional punishment upon an errant lawyer by dint of his being a member of the Bar at the time" (the *Anonymous* case, at p. 733, and see BAA 3467/00 *District Committee of the Tel Aviv-Jaffa District Bar Association v. Zeltner*, 56(ii) *P.D.* 895, 900 (2002) (hereinafter: the *Zeltner* case)). The focus of disciplinary punishment is, therefore, upon the moral flaw in the person's conduct that may disqualify him – for some period, or permanently – from the legal profession (see: the *Zeltner* case, at p. 900; BAA 6251/06 *District Committee of the Tel Aviv-Jaffa District Bar Association v. Davidovich* (unpublished, 8 July 2010), at para. 10 (hereinafter: the *Davidovich* case)).

As for the punitive purposes in this area, disciplinary punishment can be described as acting in two primary "spheres of influence": In the "sphere" close to the lawyer, the purpose of disciplinary punishment is the protection of the lawyer's potential clients

against the dangers of employing a lawyer who has failed (see the *Zeltner* case, at p. 900). But disciplinary punishment also operates in "spheres" that are more distant from the individual lawyer who was convicted. As such, it is directed at all lawyers, and to the general public, as a whole, as consumers of legal services: "The purpose of the disciplinary sanction is the protection of professional integrity, and the trust that the public, in general, and the legal system, in particular, place in the legal community" (see; the *Anonymous* case, at p. 733; BAA 11744/05 *Ziv v. District Committee of the Tel Aviv-Jaffa District Bar Association*, (unpublished, 8 August 2005); the *Davidovich* case, para. 10). As such, over and above the deterrence achieved by disciplinary punishment, the main purpose of the disciplinary sanction is to send a general message by the legal community, condemning that morally tainted criminal behavior. As my colleague Justice A. Procaccia noted in the *Zeltner* case: "Disciplinary punishments are, at base, intended as means for protecting the professional community of which the accused is a member, its appropriate image, and its trust and credibility in the eyes of the general public, and especially, in the eyes of its community of clients" (*ibid.*, at p 900; and see BAA 3866/95 *Barzel v. District Committee of the Tel Aviv-Jaffa District Bar Association*, at para. 6 (unpublished, 5 March 1998).

In light of the above criteria, we will now proceed to examine the appropriate standard of punishment in cases in which a lawyer is convicted of drug offences related to personal use.

The appropriate standard of punishment for the conviction of a lawyer for a drug offence related to personal use

11. This Court stated its opinion in regard to the general phenomenon of drug use in Israel on more than one occasion. For example, then Justice M. Cheshin once noted: "Drug use has spread like a plague in our country. To the best of our knowledge, there has been a real rise in the number of drug users over the last years …" (CrimA 6029/03 *State of Israel v. Shamai*, 58(ii) *P.D.* 734, 737 (2004)), and elsewhere: "The all-out war against drug use continues. It is a hard war, a long war; it is like the war of Israel against the Amalekites"

(CrimA 4998/95 *State of Israel v. Gomez-Cardoso*, 51(iii) *P.D.* 769, 787 (1997)). In this framework, the courts also have joined in the attempts to eradicate the phenomenon (particularly in the area of drug *trafficking*). Justice Kedmi expressed his view of this topic as follows: "The drug infection is hungrily devouring the population. Society has declared an all-out war against it, and expects that the sentences handed down by the courts for drug offences will play a part in the overall struggle to eradicate the infection" (CrimA 966/94 *Amzaleg v. State of Israel* (unpublished, 10 December 1995).

Indeed, the above statements refer primarily to the area of drug *trafficking*, and in section 7(c) of the Ordinance, the legislature distinguished between possession of drugs for personal use and possession for the purpose of sale. However, it must be remembered that even *possession* of drugs for personal use is a criminal offence that is punishable by imprisonment for up to three years (see the end of section 7(c) of the Ordinance). It is superfluous to add that the prosecution has adopted an aggressive policy in regard to this offence, which it does not view as a "negligible" matter (see: Guideline 4.1105 of the Attorney General's Guidelines: "Prosecutorial Policy – Drugs: Possession and Personal Use", at para. 5). This assumes even greater weight when we are faced – as in the case before us – not only with an offence of *possession*, but also with an offence of unlawful *cultivation* of the dangerous (even if the cultivation was carried out, as the respondent claims, under the same circumstances, i.e., for personal use), as that offence is classified under the higher threshold of drug offences, and as such, it carries a maximum penalty of imprisonment for twenty years (see: section 6 of the Ordinance).

12. I believe that when, as the result of the conviction of a lawyer for the above offences, we come to address the disciplinary aspect – in which, as stated above, sending a condemnatory message takes on greater importance – even these offences, although related to personal use, should be viewed as activity that warrants a significant disciplinary response, which should, as a general rule, be expressed in a period of actual suspension from practice. Needless to say that a conviction for drug trafficking would necessitate substantially greater severity, and even disbarment in appropriate cases.

What does establishing the above guideline mean? As explained, disciplinary punishment is concerned, inter alia, with the moral severity of acts of moral turpitude. The purpose of the disciplinary process is, inter alia, to serve the legal profession in its discourse with the general public. Disciplinary punishment serves to sharpen the message that that criminal conduct of moral turpitude is worthy of condemnation. Drug possession and drug use (not to mention drug trafficking) most certainly fall within this category. I shall explain: a lawyer serves, inter alia, as an officer of the court. He is charged with aiding the court in the "pursuit of justice" (see section 54 of the Law. See: the *Anonymous* case, at p. 734, Kling, 360-372). It has been held that "this status obliges a lawyer to act impeccably as a private individual, as even inappropriate conduct outside the framework of his work may blemish his professional standing, as well as that of the entire profession" (the *Davidovich* case, at para. 10; the *Zeltner* case, at p. 901). Therefore, a lawyer's infraction – particularly one that is substantially flawed, such as that in the instant case – is severe and cannot be tolerated (and see: BAA 8280/05 *District Committee of the Tel Aviv-Jaffa District Bar Association v. Shalem*, para. 6 (unpublished, 17 December 2005) (hereinafter: the *Shalem* case)).

Thus, the interim conclusion is that possession or personal use of dangerous drugs (not to mention trafficking) is incompatible with a lawyer's duties to the legal system, the legal profession of which he is a member, and the public. Moreover, there is a vast, unbridgeable gap between the activity with which we are concerned and the normative behavior expected of a lawyer. This infringement, therefore, receives distinct expression in the moral-disciplinary area, beyond the glaringly clear violation of the criminal law that it involves (see: Kling, 513-517). It is, therefore, inappropriate that a lawyer convicted of drug related offences continue in the usual course of work as a lawyer without a substantial period of suspension from practice (the length of which is, inter alia, a function of the type of offence for which he was convicted).

Parenthetically, I would note that in the United States, as well, there are calls for significantly more severe disciplinary punishment of lawyers convicted of drug possession for personal use (not to mention trafficking) in order to protect the general

public, achieve deterrence and protect the good name of the profession, in general, and as an element that plays a major role in the preservation of the rule of law, in particular. See: Timothy G. Bartlett, *Just Say No to A Double Standard For State's Attorneys in South Dakota*, 40 SOUTH DAKOTA L. REV. 262 (1995); Blane Workie, *Chemical Dependency and the Legal Profession: Should Addiction to Drugs and Alcohol Ward Off Heavy Discipline?*, 9 GEORGETOWN JOURNAL OF LEGAL ETHICS 1357 (1996); Deborah L. Rhode & David Luban, LEGAL ETHICS 843-846 (3rd Ed., 2001); Geoffrey C. Hazard, Jr., Susan P. Koniak, Roger C. Cramton, George M. Cohen, THE LAW AND ETHICS OF LAWYERING 849, 1146-1148 (4th. ed., 2005).

And note: I do not accept the argument, occasionally advanced, that a distinction should be drawn in this regard between the possession and use of "soft" drugs and the possession and use of "hard" drugs (such a distinction does, of course, have a place in the field of criminal sentencing, inter alia, in order to allow users of "soft" drugs a possibility of rehabilitation). Without addressing the matter in depth, I will but note here that the legislature saw fit, in our regard, to include the cannabis plant, which the Respondent grew and possessed, together with drugs that are considered "hard" in the definition of a "dangerous drug" as defined in the Ordinance (see: Part 1, Section 1 of the First Appendix to the Ordinance, and the definition of "dangerous drug" in section 1 of the Ordinance). The legislature thus instructs us that, as a rule, no distinction should be drawn between one drug and another in regard to a disciplinary conviction that should result in a suspension from practice, and with that I shall suffice (and also compare: CrimA 170/07 *Matis v. State of Israel* (unpublished, 19 November 2007); CrimFH 10402/07 *Matis* v. *State of Israel* (unpublished, 29 January 2008)).

13. The above should be qualified to some degree in view of the fact that disciplinary punishment, like criminal punishment, is individual in character. By its very nature, this means that it is appropriate that the circumstances of each individual case determine the appropriate disciplinary punishment, taking account of a wide variety of variables, among them: the scope of the offence (in terms of the period of time, and the quantity of drugs), how the drugs were used (cultivation, possession, or personal use, as distinct from

trafficking, as aforesaid), the influence of the drug use upon the professional quality of the lawyer's work, the harm to his clients, the lawyer's personal circumstances, and more. We thus find that these matters go hand in hand with the determination that that the disciplinary approach to offences of possession or cultivation of drugs – even for personal use – should not, as a rule, tend to leniency. Nevertheless, that does not preclude the possible existence of special circumstances that may, at times, justify *deviation* from the rule.

Before applying the conclusions of our examination to the circumstances of the case before the Court, we will briefly address the principled question regarding this Court's intervention in the decisions of the National Court.

Punishment policy, uniformity of punishment, and intervention in the decisions of the National Court

14. The disciplinary punishment of lawyers is given – systematically – to the jurisdiction of the disciplinary courts of the Bar Association. Those courts are – as a matter of course – entrusted with maintaining appropriate ethical standards for lawyers (see: BAA 9/89 *Yuval v. Beer Sheva District Bar Association*, 44(i) *P.D.* 705, 709 (1990; hereinafter: the *Yuval* case); and see: the *Zeltner* case, at p. 904; the *Davidovich* case, at para. 15). The legislature thus expressed its view that it is the disciplinary courts "who will pave the permitted path for the conduct of lawyers, and by their decisions, will clarify the boundaries of that path, and only when the Court concludes that the disciplinary courts deviated, in leniency or severity, in setting those boundaries, will it have its say" (the *Yuval* case, at p. 705). As we see, the said rule also has limits, and when the conditions are met, this Court will intervene in the decisions of the disciplinary courts. Those limits come into play particularly when the disciplinary courts substantially deviate from the purposes of disciplinary punishment, or from the appropriate punishment threshold required for achieving those purposes (see: the *Davidovich* case, and the citations there).

15. An examination of the case law of the disciplinary courts in regard to lawyers convicted of the possession of drugs for personal use shows that in only *one* case – two decades ago – did the District Disciplinary Court suffice with a conditionally suspended sentence (see: DC 36/89 *District Committee of the Tel Aviv-Jaffa District Bar Association v. Moshevich* (unpublished, 7 February 1990) (hereinafter: the *Moshevich* case)). Moreover, to date there have not been many such cases before the National Court, but when the National Court expressed its opinion on the phenomenon of drug use by lawyers, it generally sentenced the accused to an effective suspension from practice for up to two years, in addition to a conditionally suspended sentence (see, e.g.: DCA 146/05 *District Committee of the Tel Aviv-Jaffa District Bar Association v. Goldfarb* (unpublished, 31 October 2006); DCA 90/06 *District Committee of the Tel Aviv-Jaffa District Bar Association* v. Wiesel (unpublished, 25 February 2007)). It is thus difficult to accept the Respondent's claim that there is an established, uniform "threshold" in the National Court's case law that does *not* require effective suspension.

In light of the above, the case on appeal before us constitutes an *exception to the general rule* of non-intervention in the decisions of the National Court. A change in the result in the matter of the Respondent is, therefore, required here, inasmuch as an entirely suspended sentence is not consistent with the appropriate punishment threshold (as explained above), or even with the actual punishment threshold to the extent that such can be discerned. In this regard, it should be noted that a similar approach was expressed by the presiding judge, Advocate Mibi Moser, in his dissenting opinion in the decision under appeal. Therefore, in order to realize the appropriate purpose of disciplinary punishment in this case, it is my opinion that we must deviate from the majority opinion of the National Court.

Having suggested the principles for an appropriate punitive policy in cases such as this, and having removed the barrier of this Court's general reluctance to intervene in the decisions of disciplinary courts, we may proceed to examine the specific case of the Respondent before us.

From the general to the specific

16. The case before us presents a collection of circumstances that place it on the relatively severe side of the relevant spectrum, as we shall enumerate:

(a) The Respondent *grew* cannabis plants of significant weight, which is a separate and more severe offence than mere *possession* of a dangerous drug for personal use, for which the Respondent was also convicted (which the Respondent's attorney explained was due to a desire to avoid the economic costs and the awkwardness of the continuous purchase of the drug).

(b) The personal use of the drug continued for a period of some three years. In this regard, it should be noted that it has previously been held, on several occasions, that the punishment of a lawyer convicted of repeated offences should be more severe, inasmuch as such activity testifies to an ongoing contempt for the law (see: the *Anonymous* case, at p. 734; BAA 9536/06 *District Committee of the Tel Aviv-Jaffa District Bar Association v. Sheimovich* (unpublished, 17 September 2007), at para. 4 (hereinafter: the *Sheimovich* case); the *Davidovich* case, at para. 12).

(c) Over the course of the years in which the Respondent made personal use of the drug, he continued to pursue his profession, and even accepted cases from the Public Defender. Furthermore, the Respondent did not refrain from representing criminals in drug cases, or from contact with youth (in his volunteer work in the field of education) in order to convince them to distance themselves from drugs, while at the same time, he was habitually using drugs himself. We learn of this kind of duplicitous behavior from the Talmudic statement of Rabbi Hisda (*Babylonian Talmud, Rosh HaShana* 26a): "Why does the High Priest not enter the inner precincts in golden vestments to perform the service? Because the prosecutor cannot act as defender."

This collection testifies to an "eclipse" in the Respondent's conception of his role and status as a practicing lawyer. It would be intolerable to permit the Respondent to continue to serve as a lawyer after such conduct, without subjecting him to a period of effective

suspension from practice. His disciplinary punishment must comprise a message that the legal profession – and the general public – will not tolerate such conduct.

I will now briefly examine the reasons that led to sentencing the Respondent merely to a suspended sentence, and refute them.

Refuting the lenient opinions

17. In accordance with my approach, the District Court and National Court opinions that supported lenient punishment are deficient in that they rely upon a number of considerations that are irrelevant, or that are insufficient to tip the scales in the instant case. I will now briefly explain this point:

(a) The disciplinary courts distinguished between the use of "hard" and "soft" drugs (see: p. 6 of the opinion of Advocate Shilo in the District Court; p. 2 of the opinion of Advocate Strikovsky in the National Court). As I noted in para. 12, above, there is no basis for this distinction in this case, and it must, therefore, be rejected. Considerations of rehabilitation – that are, on occasion, appropriate for criminal punishment, and that are sometimes employed in cases of convictions for the personal use of "soft" drugs – must retreat before the public interest of protecting the legal profession, as such, and its necessary image as being opposed to drug use (in this regard, there is no room for drawing a distinction between different types of drugs). On the nature of that interest, see: the *Shalem* case; DCA 613/97 *Central Committee of the Bar Association v. Goldstein, Adv.* (unpublished, 28 April 1998). And see the comparative literature: Marcia E. Femrite, *Addicted Attorneys in Disciplinary Proceedings*, 70 MICH. B.J. 152, 153 (1991); Warren E. Burger, *The Decline of Professionalism*, 63 FORDHAM L. REV. 949, 950 (1995), Fred C. Zacharias, *The Purposes of Lawyer Discipline*, 45 WM. & MARY L. REV 675 (2003-2004).

(b) In the framework of the District Court's judgment, Advocate Shilo held that there was no element of "repetition" in the Respondent's conduct (see: p. 7, there). That is not precise,

inasmuch as the Respondent admitted, as stated, to the use of drugs over the course of *a number of years* (see a similar case: the *Sheimovitz* case, at para. 4; and see the cases cited in para. 15, above).

(c) The disciplinary courts gave undue weight, in their lenient opinions, to the Respondent's personal circumstances (see: p. 9 of the opinion of Advocate Shilo in the District Court; p. 7 of the opinion of Advocate Dessau, and p. 2 of the opinion of Advocate Strikovsky in the National Court), whereas, a tendency to give such considerations relatively *limited weight* can be discerned in cases of disciplinary punishment (see: BAA 2758/97 *Goldstein v. District Committee of the Tel Aviv–Jaffa Bar Association* (unpublished, 28 April 1998) (hereinafter: the *Goldstein* case); the *Zeltner* case, at p. 95; the *Shalem* case, at para. 7).

(d) The National Court even took into account, as a *mitigating circumstance*, the sad fact that many Israeli citizens use drugs (see: p. 2 of the opinion of Advocate Strikovsky). Such consideration implies that, in the view of the one who adopted that approach, the legal community must resign itself to this phenomenon, which is a view that cannot be accepted.

18. The upshot of paragraph 17, above, is that the opinions that favored solely a conditionally suspended sentence were deficient in their legal reasoning. Moreover – and this is of importance in the instant case – when the circumstances of the case are examined against the background of the standards appropriate to disciplinary punishment in cases like the one before the Court, there can be no avoiding the conclusion that the Respondent must be sentenced to effective suspension from practice.

19. Before concluding, I would note that I am not unaware of the Respondent's personal circumstances, which were raised before the lower courts, as well as before this Court. In addition, we should also take note of the Respondent's expression of regret, his clean criminal and disciplinary record, and the fact that he claims to have stopped using drugs since his conviction. I have also taken into account that the suspension is not "contiguous" with the conviction (although, in the past, this Court has not deemed that to

be a “mitigating” circumstance that negates the possibility of ordering actual suspension – see: the *Goldstein* case; the *Zeltner* case).

Nevertheless, these factors, along with the period of time that has elapsed since his conviction and the disciplinary proceedings against him, do weigh, overall, in his favor. These factors, together with the principle that the appeals instance does not tend to act to the full extent of the law, lead me to propose that, in ordering the Respondent’s suspension from practice, we not hand down a sentence more severe than that ordered by the District Court, and recommended in the dissent in the National Court (although the Appellant argued for more severe punishment, and I do not deny that in normal, similar circumstances, a more severe sentence would be warranted).

Conclusion

20. In light of all of the above, and despite the mitigating personal circumstances, a conditionally suspended sentence would be inadequate. Such punishment would not adequately realize the purpose of appropriate disciplinary punishment in cases such as this. I would, therefore, recommend to my colleagues that the Respondent be suspended from membership in the Bar Association for a period of four years, of which 15 months would be effective suspension from practice, while the remainder would be conditionally suspended for a period of three years, upon the condition that the Respondent not be convicted of a disciplinary offence involving moral turpitude under the Law. The said suspension would take effect as of 23 May 2011.

Justice

Justice A. Procaccia:

I concur.

Justice

Justice U. Vogelman:

In general, I agree with the level of punishment recommended by my colleague, Justice H. Melcer. I have also given consideration to the time that has elapsed since the commission of the offences. Under circumstances in which the recommended punishment is identical to that handed down by the majority of the trial court, and in any case, does not deviate from the expected scope of punishment from the Respondent's perspective, I do not find that consideration to be decisive.

Justice

Decided in accordance with the opinion of Justice H. Melcer.

Given this day, 24 March 2011.

Justice Justice Justice