H.C.J 100/57

H.C.J 103/57

IZHAK WEISS

v.

THE INSPECTOR GENERAL OF THE ISRAEL POLICE AND ANOTHER.

H.C.J 100/57

YOHANAN MILLER

v.

THE INSPECTOR GENERAL OF THE ISRAEL POLICE AND ANOTHER.

H.C.J 103/57

In the Supreme Court sitting as the High Court of Justice.
[February 13, 1958]
Before Olshan P., Sussman J., and Landau J.

Jurisdiction - Police Ordinance - Court of Discipline - Offence committed by Police in Gaza Strip after Sinai Campaign - Distinction between jurisdiction of Court of Discipline and ordinary criminal jurisdiction - Jurisdiction personal and not territorial - International Law.

The petitioners were members of the Israel Police Force. They were sent to the "Gaza strip" when it was occupied by Israel armed forces after the Sinai Campaign to do normal police work there. In contravention of an order forbidding the purchase of goods, they bought nylon material, medicines, cameras and films. They were charged before a Court of Discipline which was set up under the Police Ordinance. The petitioners contended that the court had no jurisdiction to hear charges against them because, inter alia, the Police Ordinance only dealt and could only deal with offences committed in Israel and not with offences committed in Gaza which was not part of Israel and had not even been declared to be the occupied territory of Israel. They obtained an order nisi from the High Court calling upon the Inspector General of the Israel

Police and the Court of Discipline to show cause why the proceedings against the petitioners should not be discontinued.

Held, discharging the orders nisi, that the jurisdiction of the Court of Discipline, which was established for preventing the lowering of the standards of the police, is not the same as ordinary criminal jurisdiction, but is personal and not territorial. The tribunal, therefore, had jurisdiction in the present case, although the offences were committed beyond the territory of Israel.

Palestine case referred to:

(1) *Privy Council Appeal* 24/45 *Lipshitz v. Valero & Others* (1947), 14 *P.L.R.* 437.

Israel cases referred to:

(2) H.C. 279/51 *Amsterdam & Others v. Minister of Finance* (1952), 6 *P.D.* 945.
(3) *Cr. A.* 126/51 *EI-Tourani v. Attorney-General* (1952), 6 P.D.1145.
(4) *Cr. A.* 174/54 *Shtampfer v. Attorney-General* (1956), 10 P.D. 5.
(5) *H.C.* 27/48 *Lahisse v. Minister of Defence & Others* (1949), 2 P.D. 153.
(6) *H.C.* 268/52, H.C. 47/53 *Sapoznikov & Others v. Disciplinary Tribunal* (1953), 7 *P.D. 656.*
(7) *H.C.* 13/57 *Tsimoukin v. Civil Service Disciplinary Tribunal & Others* (1957), *11 P.D.* 856.
(8) *Cr. A.* 20/53 *Neiman & Others v. Attorney-General* (1955), 9 P.D. 845.
(9) *C.F.* 82/51 *Haifa, Attorney-General v. A.B.* (1951/52), 5 P.M. 123.
(10) *C.F.* 208/52 Jerusalem, Shababo's *Heirs & Others v. Heilin* (1952/53), 8 P.M. 455.

English cases referred to: -

(11) *Niboyet* v. *Niboyet:* (1878), 4 P.D. 1.
(12) Re *A Solicitor, Ex parte Incorporated Law Society:* (1898), 1 Q.B. 331.
(13) *R. v. Casement:* (1917) 1 *K.B.* 98.

Rabinovitch for the petitioners.
H.H. Cohn, Attorney-General, for the respondents.

LANDAU, J. The question raised in both these petitions is whether a Court of Discipline of the Israel Police Force has jurisdiction to deal with offences against discipline committed by Israel policemen in the Gaza strip at the time when the strip was in the occupation of the Israel Defence Forces.

Both the petitioners are serving in the Frontier *Force, Israel* Police. The petitioner in File No. 100/57 holds the rank of assistant district inspector and the petitioner in File No. 103/57, the rank of police sergeant. During November and December, 1956, they served with the Israel Police Force in the Gaza district. In April, 1957, they were charged together with a third policeman before a Court of Discipline of the Israel Police on nine counts in connection with the purchase of various goods (nylon cloth, medicines, cameras and films) in the months of November and December, 1956, in Gaza, contrary to the orders given by the Deputy Inspector of Police, Gaza District, and, alternatively, by the Military Governor and, alternatively, contrary to standing orders for the Gaze area, all of which prohibited the purchase of goods in Gaza by anyone not a local inhabitant. These offences were described in the indictment as disobedience to an oral order duly given by a superior officer (that is to say an oral order given by the Deputy Inspector of Police, Gaza area); and as disobedience to an order duly given in writing by a superior officer (that is to say standing orders for the Gaza area) all of which are offences against the good order and discipline of the Police Force as set out in s. 18(1)(i) of the Palestine Police Ordinance and paragraphs 1 and 84 of the addendum to the Police (Definition of Disciplinary Offences) Rules, 1955. The tenth count was confined to the petitioner Weiss for leaving without a reasonable cause the area of duty, contrary to paragraph 7 of the addendum - in that on December 1, 1956, being a member of the Police Force and serving in Gaza, he left the Gaza area and proceeded to Migdal without reasonable cause and, finally, the eleventh count also against the same petitioner and again contrary to paragraph 1 of the addendum - in that on the same day he used a police transport car for a purpose not connected with police duty, namely transporting goods contrary to orders of police headquarters.

In their petition to the court, the applicants claimed that the Court of Discipline had no jurisdiction to deal with these offences. This court has issued orders nisi against the Inspector General of the Israel Police and against the Court of Discipline to appear and

show cause why the proceedings before the Court of Discipline should not be discontinued and the complaint lodged before it struck out.

The Attorney-General, who represented the respondents on the return day, did not deny the facts as set out in the petition, and the difference between the parties concerns the legal questions alone. The facts necessary to understand the dispute are shortly these: -

(a) On the conquest of the Gaza strip by the Israel Defence Forces, the area was placed under martial law. The Israel Police entered the district at the request of the army for the purpose of doing police duty there. In an order setting out the "powers of the Israel Police in the district of Gaza in accordance with the law in force in the district of Gaza" which was issued by the Israel Army Commander, Gaza, to the Inspector General of the Israel Police, the Army Commander, by virtue of his authority, ordered that "the Israel Police Force is as from November 15, 1956, authorised to act in the Gaza area as a police force in accordance with the Police Ordinance as it was in force in Palestine on May 15, 1948, with such amendments as were added thereafter in the Gaza District". It was further ordered, "that every policeman or officer duly appointed in Israel shall have the right in the Gaza District to exercise the same powers that he had in Israel." The petitioners claim that they went to the Gaza strip after its conquest by the Israel Army and stayed there from time to time. It must be presumed that during those times they were there on police duty.

(b) In the order of the Military Commander which was mentioned in the indictment against the petitioners before the Court of Discipline, the purchase or sale of anything by anyone who was not a local inhabitant of the Gaza District was forbidden except by permission of the Commander or on his behalf. The order further provided that anyone contravening its provisions would be tried, in the words of the order, "by a military court set up to try offences against the Defence (Emergency) Regulations, 1945, and shall be liable to imprisonment for up to 3 years or a fine of up to IL. 1,000.- or both". We have also been told that the standing order for the Gaza area mentioned in the indictment repeated the contents of this order of the Military Commander.

(c) The area of the Gaza strip had not been declared as an 'occupied area' in accordance with section 1 of the Judicial and Administrative Areas Law, 1948. In the

proclamation issued by the Commander of the Israel Army in the Gaza strip on November 13, 1956, it was declared that "the laws which were in force in the District on November 1, 1956. shall remain valid in so far as they shall not be contrary to this Proclamation or other proclamations or orders that have been given or will be given by me and subject to such modifications as the establishment in the Gaza District of martial law by the Defence Army of Israel may make necessary."

(d) No proclamation was made according to section 51 of the Police Ordinance [1] that enabled the Police Force or any part thereof to be placed under military command.

Counsel for the petitioners, Mr. Rabinovitch, claims that the above facts do not entitle the Court of Discipline to entertain jurisdiction and try his clients for what they did during their stay in the Gaza district, that the jurisdiction of the Court of Discipline was derived from section 18 of the Police Ordinance, that the whole of the Ordinance, and therefore also the disciplinary jurisdiction provided for by it, apply only to acts committed within the State of Israel, that is to say, within the area to which the law of the State of Israel applies according to the Judicial and Administrative Areas Law. For the same reason the superior officers of the appellants in the Police Force had no legal right to send them outside the State of Israel. Further, the jurisdiction of the Court of Discipline set up under the Police Ordinance was a criminal jurisdiction and the acts alleged against the petitioners in the indictment were criminal acts and for this reason as well, there was no jurisdiction to try them. Criminal jurisdiction, they submitted, is territorial, that is to say limited to acts committed within the borders of the State, unless otherwise provided in the law - and there was no such provision. If it was possible to try the petitioners at all, either it would have to be done in accordance with the Police Ordinance, and such amendments of it as were made

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[1] police Ordinance, section 51:

Employment of the Force as a military force (as amended no. 4 of 1946)

51. (2) The High Commissioner (Minister of police) may make rules for the administration and discipline of the Force or part thereof serving as a military force, and generally for giving effect to the provisions of this section, and for those purposes may by such rules modify or amend the provisions of this Ordinance (other than this section). Subject to the provision of such rules, members of the Force to whom the Proclamation applies shall continue to be subject to the provisions of this Ordinance except so far as those provisions conflict, or are inconsistent, with any provisions of the Army Act for the time being applicable by virtue of the next following subsection.

(Note: A Proclamation may be made by the High Commissioner (now Minister of Police) that the Force or part thereof be a military force, under section 51(1).)

after 15.5.48 in the Gaza district - and no such amendments were called to our attention - or the petitioners should have been tried under martial law in accordance with the Order of the Military Governor.

In spite of the exhaustive arguments of counsel for the petitioners, I have come to the conclusion that these applications must be dismissed and that the Police Court of Discipline had jurisdiction to try the petitioners for the offences set out in the indictment submitted before it.

Counsel for the petitioners quoted at length from the judgment of Agranat J. in *Amsterdam v. Minister of Finance* (2), and indeed we can gather from this illuminating precedent the following principles relevant to this case: -

(a) From the point of view of internal ('municipal') law there is no restriction upon the power of a legislator possessing sovereign jurisdiction to enact laws concerning property and persons even if they are situated outside the borders of the State (ibid., at pp. 965, 966).

(b) Nevertheless the common law (and following it also Israel Law) recognises the principle that a law passed by Parliament applies only within the territory of the State unless it is otherwise provided, either expressly or by implication (ibid., at pp. 967, 968).

(c) An implied intention not to follow the territorial principle can be gathered from the general purpose of the law viewed as a whole in all its sections, or from the nature of the provisions of the law under consideration (ibid. p. 968, also the conclusions at p. 971).

There is no conflict between these principles and Article 38 of the Palestine Order in Council, on which counsel for the petitioner relies. This Article (as amended in 1935) provides:

> "Subject to the provisions of this part of the Order and any Ordinance or Rules the civil courts hereinafter described and any other courts or tribunals constituted by or under any of the provisions of any

Ordinance, shall exercise jurisdiction in all matters and over all persons in Palestine" (substitute Israel).

ject to the provisions) were meant to restrict and not to extend what is said in the body of the Article in the same way as similar words in the first paragraph of Article 43[1)] must be read restrictively (see *Lipshitz v. Valero* (l)). Does this mean, then, that according to the interpretation of this Article the civil courts in Israel have territorial jurisdiction only in respect of property and persons within the State? If this were so, this would seriously limit the above principle that a sovereign legislator has power to make laws applicable to matters and persons even if they are outside the borders of the State. For what is the use of a law which is meant to apply extra-territorially if the court has no power to enforce it? Both these matters are the two sides of the same coin. This proposition would lead us to the surprising conclusion that there was no validity to such laws as section 5 of the Ottoman Code of Criminal Procedure and the Rules for serving abroad of a summons to appear for trial before a civil court.

The Attorney-General contended in this connection that the words "all matters and over all persons" in Article 38 do not mean that in a trial before the court both the matter and the person concerned must be within the boundaries of the State but that it would be sufficient if one or the other was in Israel. That is to say that for the purpose of Article 38 it would be enough in the case before us if the petitioners were to be present in Israel at the time of their trial although the incidents being the subject matter of the prosecution took place outside the boundaries of the State. I personally expressed a similar opinion in the case of the *Attorney-General v. A.B.* (9). The judgment in that case was confirmed in *EI-Tourani v. Attorney-General* (3). This would be a sufficient answer here were we to hold that in Article 38 the legislator had made provisions concerning the jurisdiction of the courts of the State over persons or matters outside the State.

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1) Palestine Order in Council, 1922, Art, 43 :

Supreme Court — There shall be established a Court to be called the Supreme Court of which the constitution shall be prescribed by Ordinance. The Supreme Court sitting as Court of Appeal shall have jurisdiction subject to the provisions of any Ordinance to hear appeals from all judgments given by a District Court in first instances or by the Court of Criminal Assize or by a Land Court.

But on further consideration it seems to me that this proposition itself is doubtful especially as regards the question of the extraterritorial jurisdiction of the courts in criminal cases. Article 38 is phrased in language commonly used in English statutes and had the legislator intended to make rules on this matter he would no doubt have been more exact and would have said that the local courts had jurisdiction in criminal matters when the accused at the time of committing the offence was within the country. For as is well known according to English law, the jurisdiction of a court to try an accused for a crime depends first and foremost on the place where the accused was at the time when the offence was committed. But according to Article 38 the jurisdiction of the court would be made dependent on the place where the accused is found at the time of trial. From this we see that this Article is not dealing with the question of extra-territorial jurisdiction of the court but with a different question altogether - that is to say with defining the boundary line of the jurisdiction of the civil courts therein mentioned and that of the other courts with limited jurisdiction, especially the religious courts. The legislator lays down that the jurisdiction of the civil courts is general, covering all persons and all property in Palestine, subject always to such limitations as are set out in the law as, for instance, Article 51(1) in connection with the jurisdiction of the religious courts in matters of personal status. Article 38 does not deal at all with the power of the Mandatory legislator to issue laws with extra-territorial effect or with the courts to enforce these laws. In other words the emphasis in this Article is on the comprehensive nature of the jurisdiction over all persons and all property in the land but it does not exclude additional jurisdiction - which need not necessarily be comprehensive - with regard to persons or property outside the country or with regard to causes of action originating abroad.

I find support for my views in the judgment of Witkon J. which was given by him whilst sitting in the District Court in the case of *Shababo's Heirs* v. *Heilin* (10). That judgment was cited with approval by this court in *Shtampfer v. Attorney-General* (4). The subject-matter of that case was the immunity enjoyed by foreign diplomats and it was contended that Article 38 repudiated this claim to immunity. It is true that that case was different from the one before us because there an attempt was made to limit the comprehensive scope of the jurisdiction of the courts over all persons within the boundaries of the State. That contention, of course, could not possibly stand because

Article 38 is also subject to and is restricted by Article 46 of the Order in Council [1)] which transfers to the body of the local law the rules of the common law relating to immunity of foreign diplomats. But in the course of his judgment Witkon. J. said : -

> "Article 38 is a kind of introduction to that part of the Order in Council which deals with the administration of justice by the courts and the division of their jurisdictions between the various courts themselves. The article is not meant to lay down rules in the field of International Law."

With respect, I should like to agree with those words which also apply to our case. Consequently therefore (so long as there is no law enacted specifically on the subject) the general principles of the common law with regard to extending the extra-territorial jurisdiction of the local courts apply in this country. And this is not because the first words in Article 38 are directed to Article 46 but because of the provisions of Article 46 itself without any reference at all to Article 38.

The law applying in the case before us is the law which was in force before the enactment of the Courts Law, 1957. In this connection however it is necessary to point out that the Israel legislator was of the opinion, it would seem, that the introductory proviso in Article 38 could be dispensed with altogether, for this Article was repealed by s. 48(8) of the Courts Law without being re-enacted.

Counsel for the petitioners contends further that the jurisdiction of the Police Court of Discipline is by its very nature criminal and that, unless the law expressly provides otherwise, criminal jurisdiction is territorial and that the Police Ordinance has no such provision at all; on the contrary it has clear indications that it was intended to apply only within the confines of the territory of the State.

Counsel for the petitioners is correct when he says that the basic principle of the criminal jurisdiction of the court is territorial. Such is the English law (see Halsbury, third

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[1)] For the text of Article 46, see p. 64 supra.

edition, Vol. 10, p. 317, s. 579) and we have the same principle as it came to us through section 6 of the Criminal Code Ordinance. 1936. But this law is not without its exceptions. There are such exceptions in English law which were created by special statutes to cover certain crimes which were committed by British subjects outside England such as, for example, treason, homicide, bigamy (Halsbury, ibid., at p. 322 ff.). In *Niboyet v. Niboyet* (11), Brett, L. J. laid down the principle as follows: -

> "All criminal statutes are in their terms general but they apply only to offences committed within the territory (of the State) or *by British subjects"* (p. 20).

From the historical point of view the personal principle preceded the territorial in criminal law, having its origin in the feudal notion of the tie of allegiance binding the king and his subjects. As we have said the principle continues to exist even today in connection with certain crimes and it does so side by side with the territorial principle which has in these days become more important. According to International Law too every State is entitled to exercise its legal jurisdiction over its subjects even whilst they are abroad. See for instance how Schwarzenberger in A Manual of International Law, third edition, p. 42, explains the historical transition from the personal principle to the territorial principle in modern times. He writes as follows: -

> "Thus the conception of territorial - as distinct from personal - sovereignty and jurisdiction developed, and the notion of personal sovereignty was pushed into the background. It would not, however, be correct to assume that the conception of territorial jurisdiction completely replaced that of personal jurisdiction. In modern international law the conceptions of personal and territorial jurisdiction exist side by side, though with the emphasis on territorial sovereignty."

And Oppenheim in the eighth edition of his book, vol. I at p. 330 says: -

> "The Law of Nations does not prevent a State from exercising jurisdiction within its own territory over its subjects travelling or residing abroad, since they remain under its personal supremacy."

Thus our own Criminal Code Ordinance in section 3 (b)[1)] strays from the territorial principle in prosecutions for crime and the same is the case in Article 3 of the Army Code (see *Lahisse v. Minister of Defence* (5), paragraph 31 of the judgment at p. 166). Further, the Israel legislator has recently abandoned the territorial principle to an even greater extent in the Criminal Amendment (Offences Committed Abroad) Law, 1955.

I have dwelt at length on these matters because as we shall see they are of some importance: not that I am to be taken as agreeing with the contention of counsel for the petitioners that trials before a Police Court of Discipline are subject to the principle of territorial jurisdiction of criminal trials. Counsel for the petitioners relies on the judgment of Sussman, J. in *Sapoznikov v. Disciplinary Tribunal* (6), which upheld the jurisdiction of the same Court of Discipline to deal with an offence "of a civil nature", such as rape, although purporting to be an offence against discipline for acting in a manner likely to bring discredit on the good name of the force (ibid. at p. 662). The view was expressed in that judgment (at the end of p. 661) that a policeman who had been convicted in such a prosecution before a Court of Discipline could plead "autrefois convict" in a prosecution for the same offence before an ordinary court. The President of the court, dissenting, differed from this way of interpreting the law which would give to a policeman a special status that was better than that of an ordinary citizen as regards responsibilty for criminal acts that had nothing to do with his police duties (ibid. at p. 665). Counsel for the petitioners also cited the words of my judgment in *Tsimoukin v. Civil Service Disciplinary Tribunal* (7), where I respectfully agreed with the opinion of Sussman J. that the trial of a policeman before a Court of Discipline might induce an ordinary court to accept a plea of 'double jeopardy' and I added that such a trial was "very much like an ordinary criminal trial". Such a similarity no doubt exists especially in 'civil crimes' that are triable before a

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[1)] Criminal Code Ordinance, 1936, section 3 (b) :

> 3. The provisions of this Code shall be without prejudice to -
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> (a) .....
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> (b) the liability of any person to be tried and punished for an offence under the provisions of any law relating to the jurisdiction of the Palestine courts in respect of acts done beyond the ordinary jurisdiction of such courts;

Court of Discipline. But we must not conclude from this that because the methods of the trials are similar, that trial before a Court of Discipline is in its nature essentially identical with that of an ordinary criminal trial. Regarding this point Cheshin, D.P. said this in *Tsimoukin v. Civil Service Disciplinary Tribunal* (7), at p. 861: -

> "The object of a trial before a criminal court is not the same as that of a trial before a court of discipline. In a criminal prosecution the purpose is to find out whether the accused has broken the law and whether he should receive the punishment prescribed by law; whereas the purpose of a trial before a court of discipline is not so much to punish the 'criminal' as to establish first and foremost whether he is still worthy of the trust which the authorities and the public had placed in him before he came under suspicion."

We have to note in this connection that although according to section 18 (6) of the Police Ordinance the accused who is charged before a Court of Discipline is liable to both imprisonment and fine, according to section 18 (7) he is liable to dismissal which is the penalty par excellence of proceedings before a Court of Discipline.

In a judgment on the same subject, I said in *Tsimoukin v. Civil Service Tribunal* (7), supra, that "proceedings before a Court of Discipline are *sui generic* and the usual notions regarding criminal or civil proceedings do not fit them completely". In spite of the fact, undesirable though it may be, that a policeman who has committed a crime might escape punishment in a prosecution for the same act before an ordinary court after a trial before a Court of Discipline, the purpose of proceedings before a Court of Discipline is completely different from that of regular criminal proceedings, in that it is meant to preserve the discipline and good order of the Police Force and to eliminate all unworthy elements from its ranks.

Because of this difference in purpose, one cannot apply to trials before a Court of Discipline the principle of territorial jurisdiction which is characteristic of criminal trials - that is that criminal enactments are applicable only to offences committed within the State unless otherwise specifically provided.

Because of this difference, the position is the same even if the acts in respect of which the petitioners were accused may also possibly be criminal offences against the Defence (Emergency) Regulations, 1945, in accordance with the order of the Military Commander. For at the hearing before the Court of Discipline these acts will be considered not from the point of view of their being crimes as of their being offences against discipline, in that the petitioners disobeyed orders which were given to them in their capacity as policemen.

We return therefore to the general basic principle set out above following the judgment in *Amsterdam v. Minister of Finance* (2), that every enactment is territorial in application unless otherwise expressly or by implication stated; that the intention not to follow the territorial principle can also be gathered from the general object of the law as appearing in all its several parts or from the nature of the particular legal provision that is under the consideration of the court. In connection with this point, counsel for the petitioners, as will be remembered, contended that the Police Ordinance not only does not disclose that it meant to disregard the territorial principle but that, on the contrary, it had many sections that supported it. For instance, it is said in section 3 that "there shall be established in Palestine a Force to be known as the Police Force" and section 16 provides that "A police officer, when in Palestine shall..... be considered to be always on duty: he may at any time be employed in any part of Palestine" (now Israel).

This being the case, Mr. Rabinovitch contends that the service of the petitioners by its very nature is confined to the area where they are obliged to serve and it was illegal to have sent them outside that area and having been sent there they did not take with them the special law, the Police Ordinance, that applies to them, and with it the jurisdiction of a Court of Discipline set up under it.

The Attorney-General's reply to this contention is that no matter how the Police Ordinance was meant to be interpreted in the days of the Mandate, the fact that there is now a sovereign State makes all the difference. And from now on we have to consider the Ordinance as authorising the employment for service of the Israel Police Force in all areas, even outside the boundaries of the State, which are in fact under the control of the State and where the Israel authorities are bound to keep the peace among civilians. This is the

conclusion of the Attorney-General who considers it to be in accordance with International Law which permits a State to send its armed forces outside its boundaries.

This answer to the contention of counsel for the petitioners does not seem to me to be convincing. It is possible that the "territorial" sections of the Police Ordinance were originally enacted so that the law should be in harmony with the obligations of Palestine owing to its status as a country under mandate. But does this entitle us to breathe new life into these sections to make them fit the changes brought about by the creation of the State, as the Attorney-General is asking us to do ? There would of course have been no problem on this point had Israel proclaimed the Gaza strip to be occupied territory. But the Minister of Defence has refrained from issuing such a proclamation. The question therefore is whether there is any legal principle under which one can consider a policeman who is serving in an area which is in fact under the control of the State as if he were serving within the State itself. I have found no such rule either in our own municipal law or in International Law. The function of the police is of course to keep order within the State whereas it is the duty of the army to preserve the peace against all dangers from without. When a State sends its army outside its borders and conquers additional territory which it occupies without extending its sovereignty over it, it is occupying the territory through its army which sets up military rule therein. (See Oppenheim, seventh edition, vol. II, p. 438). Israel too has acted in this way with regard to the Gaza strip, that is to say it established there a military government from which all other authority was derived. The civilian police also- functioned in fact within this framework, for this force had been asked to operate there by the army, under whose command it was placed. And within this framework it carried out police duties among the local inhabitants. The Attorney-General has contended that the police are part of the armed forces of the State which are bound to serve also outside its borders and which in any case carry with them the prerogative of the State to try them wherever they are. As far as the army is concerned, it is true that this principle has received expression in sections 13 and 14 of the Military Justice Law, 1955, which provide for trial by court martial of members of the Israel Army in respect of military and other offences committed whether "'inside or outside" the boundaries of the State.

But where is the authority for the proposition that for this purpose the civil police are part of the armed forces of the State? Section 51 of the Police Ordinance enables the

Minister of Police during a war or an emergency to issue a proclamation declaring that the Police Force or some part of it is to be considered as a military unit; and on the declaration being made certain consequences follow as enumerated in the relevant section of the Ordinance. Such a declaration was never issued in connection with the Israel Police in the Gaza strip. Had it been, it is possible that those policemen who had been sent there for service would have been considered as soldiers also in this respect that they too were under an obligation to serve outside the area where Israel law applies. In the absence of such a proclamation, there was no legal authority to compel them to serve anywhere except within that part of the territory of the State where a policeman is bound to serve in accordance with the Police Ordinance. We cannot therefore consider this as being the source from which the Court of Discipline derived the necessary jurisdiction to try the petitioners whilst they were in the Gaza strip.

But this does not end the matter. They were under *no duty* to serve in the Gaza strip and had the petitioners refused at the proper time to be transferred there, in my opinion, it would not have been considered on their part as a breach of duty. But nothing prevented them from agreeing of their own free will to undertake this additional service. A policeman may also volunteer to perform a service outside the State. It is sometimes necessary, for instance, to send police officers abroad, to make contact with the police of another State in connection with the investigation of a crime which a local resident is suspected of having committed. A policeman who undertakes such a task does not cease to be a policeman when abroad. I see no difference in principle between such a case and what happened here - except on a bigger scale - with regard to the Israel Police Force serving in the Gaza strip, that is to say in a place in Palestine outside the area where the law of the State of Israel applies. We have not heard that the petitioners objected to or protested against their being sent to the Gaza strip. In their application they say simply that "they went there". It seems that they must be considered as volunteers who undertook to perform a service which they were not obliged to do. But from its nature this was police work. If we come to the conclusion that the jurisdiction of a Court of Discipline is not territorial but personal in character, that is to say that it also exists in relation to matters connected with the behaviour of a policeman, wherever he is, even outside the State, then there is no difference between a policeman who went there under an order or as a volunteer. We dealt with a similar problem - though in another field - in *Neiman v. Attorney-General* (8). There

the appellant, a clerk of the Jerusalem Municipality, claimed that he could not be held guilty under section 140 of the Criminal Code Ordinance, 1936 (Breaches of Trust by Public Officers) because the act was committed in Bet-Mazmil which was outside the area of the Municipality of Jerusalem. In rejecting this claim, this court said (at p. 857) :

> "Mr. Meridor was unable to cite any authority according to which an official, such as the appellant, would be exempt from liability if he could show that what he did was outside the confines of jurisdiction of the public body employing him..... The work at Bet-Mazmil was done in accordance with the decision of the Municipality, the way it was done was no different at all from the usual way of doing such things at the Municipality and the second appellant did this work in the course of his usual duties."

And the same can be said in our case: the duties with which the petitioners were charged were ordinary police duties which had to be performed in accordance with the rules of discipline when carrying them out.

We thus come to the decisive question in its simplest form : What is the nature, then, of a trial before a police Court of Discipline - is it connected with the territory of the State or is it personal, that is connected with the man ? Counsel for the parties have carefully searched for precedents dealing directly with this question and have found none. I too have searched to no effect. The Attorney-General has mentioned an English judgment in *re A Solicitor* (12). In that case the English court was asked to revoke the licence of an English solicitor because of his misconduct in South Africa. The application was refused because the court was not prepared to accept, as the only ground for its decision, the judgment of the court of South Africa which had revoked the licence of the solicitor in that country. But this judgment can also be taken as ruling - although the question was not specifically considered - that had there been sufficient proof before the English court it would not have hesitated in granting the application, although the charge was in respect of an offence against discipline which was committed abroad. Wright, J. said at p. 662:

> "I do not say at all that there may not be cases where a solicitor is struck off the rolls by a foreign court when this court ought to - and probably would act - if the facts were brought before it in a proper way and if it could see clearly what it was that the solicitor had done....."

In order to test the nature of disciplinary jurisdiction in the absence of direct authority we can only solve the problem in the light of general considerations and by reference to two opposing principles- the territorial principle and the personal principle - and decide which of these two is more appropriate to the jurisdiction in question.

As I have already hinted, the territorial principle of jurisdiction is strongly linked to the notion of sovereignty of a State over its territory, whereas the personal principle is connected with the tie of personal allegiance existing between the sovereign and his subject. When we base jurisdiction on the notion of the sovereignty of each State within its own territory, it becomes clear that on the one hand the State is entitled to adjudicate on all matters within its territory, irrespective of the persons concerned and that on the other, an offence or some other act committed outside that territory must, as a matter of course, come within the jurisdiction of the foreign State where the offence or other act took place. An ideal division of jurisdiction between States based purely on territorial principles would require each State, in its administration of justice, to confine itself to matters taking place within its own borders and every time a State went beyond these it would be considered as interfering in the internal affairs of another State. (We have seen that this principle is not carried out in practice in its entirety but that it is sometimes mixed with elements having the characteristics of personal jurisdiction which result in fact in parallel proceedings in the courts of two States.) But when does this happen ? When the other State also claims for itself the right to try the persons concerned in the same matter. Every civilized State for example is prompt in punishing crimes committed within its borders and is willing to enforce civil obligations created there. But when the foreign State is indifferent to the same act and does not react at all to it, no clash need be feared between two different judicial jurisdictions. Now every trial by a Court of Discipline is held within the framework of some organisation which is either international or is limited to one State. If international, then it certainly is not confined to the area of any one State and if it is national no other State would have any interest in its doings. In any case no conflict can arise between two

judicial jurisdictions. If, for instance, an Israel policeman committed an act which was a breach of discipline, whilst in France, that aspect of his behaviour would be of no interest to France.

Further, as the Attorney-General has pointed out, the Gaza strip is not within the sovereign jurisdiction of any other State and for this reason too one cannot speak here of a conflict with the lawful jurisdiction of another State.

So far I have dealt only with the point of inter-State relations according to which there is no objection to the extension of the jurisdiction of Courts of Discipline to deal with acts that took place outside the borders of the State. But that does not cover the whole problem. For the basic principle is that prima facie all jurisdiction is territorial and before it can be extended beyond the boundaries of the State, one has to show clearly that this was the intention of the law either expressed or implied. I am of the opinion that such an intention can also be implied from the very nature of a trial before a Court of Discipline. As I have said such a trial is held within the framework of some special organisation and concerns no one who does not personally belong to this particular body. Its purpose is to prevent the lowering of the professional standards of members of the organisation. Each such member has special duties and in consequence generally enjoys special privileges, all of which require the upholding of a special standard to ensure the effective functioning of the organisation and the protection of its reputation vis-a-vis others. These rights and duties too are personal to the member of the organisation and they forge a special tie of allegiance between him and it. One may draw in this connection a close comparison with the duty of personal allegiance which is at the root of jurisdiction, based on the personal principle. Here is a description by an ancient English writer explaining why the jurisdiction in a trial for high treason is personal [Foster in Crown Law, quoted in *R. v. Casement* (13)]:

> "With regard to natural born subjects there can be no doubt. They owe allegiance to the Crown at all times and in all places. ...
>
> Natural allegiance is founded in the relation every man standing in to the Crown, considered as the head of that society whereof he is born a member; and on the peculiar privileges he derived from that relation..."

When we divest this conception of its 'royal' apparel does it not also fit the relationship of loyalty, to protect which, trial before a Court of Discipline is provided ? It is clear that such a relationship cannot be subject to any territorial limitation as it is necessary to protect the professional standards of a man who is subject to the discipline of an organisation "at all times and in all places" wherever he may be carrying out his duties. It would be unreasonable to give the law another interpretation whereby a policeman on police duty abroad would move about in a vacuum, as it were, as far as discipline was concerned.

Finally I will answer briefly two further contentions of counsel for the petitioners: First that the petitioners should have been court-martialled for contravening the order of the Military Governor. Possibly they were also liable at the time to be called to account for the actions of which they are accused by being prosecuted before the Israel Military Court in the Gaza strip; but this was not done. The fact that this method was not used can certainly not prevent their being charged before a Court of Discipline for breach of discipline and misbehaviour which the actions themselves imply. The second contention of the petitioners was that the Court of Discipline when trying them should apply, with all its amendments which are unknown to us, the Police Ordinance as it was in force in the Gaza strip on the eve of its conquest by the Israel Army. This contention is based on the orders of the Military Governor for the Gaza District which authorised the Israel Police Force to operate as the 'Gaza Police Force' in accordance with the Police Ordinance with all its amendments made for Gaza. But this law applied in relation to the powers of the Gaza Police vis-a-vis the public when dealing with the local inhabitants. Vis-a-vis the Force the petitioners remained Israel policemen even whilst serving in the Gaza Police and as such they continued to be subject to the jurisdiction of a Court of Discipline to try them in accordance with the Police Ordinance as it was in force in the State of Israel.

I am accordingy of the opinion that the orders nisi must be set aside, and the applications of both petitioners dismissed.

SUSSMAN J. I concur.

OLSHAN. P. I concur. I am of the opinion that the question whether a person who is serving in the Police Force can be sent abroad in connection with his police duties, without his own consent, needs further consideration.

Order nisi discharged.

Judgment *given on February* 13, 1958.