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Oct. 14

[ZEKIA, P., VASSILIADES, TRIANTAFYLLIDES, MUNIR AND  
JOSEPHIDES, JJ.]

PHILIPPOS  
HJI GEORGHIOU  
AND OTHERS  
v.  
THE REPUBLIC

PHILIPPOS HJI GEORGHIOU AND OTHERS,

*Applicants,*

v.

THE REPUBLIC,

*Respondent.*

*(Question of Law Reserved No. 143)*

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*Criminal Procedure—Charge of premeditated murder before the Assize Court—Objection as to the jurisdiction based on section 115 of the Military Criminal Code and Procedure, Law 40 of 1964—Question of law reserved for the opinion of the Supreme Court under section 148 of the Criminal Procedure Law, Cap. 155—Reservation unnecessary as there was no contest of jurisdiction between two different courts—Plea of “no jurisdiction” ought to have been determined by the trial Court under section 69 (1) (a) of the Criminal Procedure Law, Cap. 155.*

*Military Criminal Code and Procedure, Law 40 of 1964, section 115—“Contest” of jurisdiction—Not mandatory to reserve question for opinion of Supreme Court if there is no contest of jurisdiction between two courts.*

*Court-martial—Criminal Courts—Contest of jurisdiction.*

This is a Question of Law Reserved by the Assize Court of Nicosia, for the opinion of the Supreme Court under the provisions of section 148 of the Criminal Procedure Law, Cap. 155.

In this case the three applicants were accused before the Assize Court of premeditated murder and, before they were asked to plead, an objection was taken by counsel for the defence as to the jurisdiction of the Court to try the case. The objection was based on section 115 of the Military Criminal Code and Procedure, Law 40 of 1964.\*

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\* *Note* : Section 115 of the Military Criminal Code and Procedure, Law 40 of 1964, is set out in full in the judgment of the Court.

The Question as reserved for the opinion of this Court was in the alternative :

- (a) "Does section 115 of Law 40 of 1964 on its true construction, upon objection being taken under it, make it mandatory to refer the case to the Supreme Court without examining the issue raised and if so in which cases, or
- (b) Is section 115 of Law 40 of 1964 capable of any other interpretation?"

*Held*, (1) for a contest as to jurisdiction to arise under section 115 there must exist a dispute between two different courts, *i.e.* between the court-martial and an ordinary criminal court, exercising jurisdiction in respect of the same subject-matter where there is a pending case before each of these courts.

(2) Consequently, a person charged before an ordinary criminal court, in this case the Assize Court, cannot avail himself of the provisions of section 115, which provides for the regulation of the jurisdiction in case of contest of jurisdiction between two courts, *i.e.* an ordinary criminal court and the court-martial, where there is no other case pending against him before the court-martial.

(3) In the present case the Assize Court had a duty to consider and decide the plea of "no jurisdiction" under the provisions of section 69 (1) (a) of the Criminal Procedure Law, Cap. 155, and should not have reserved the question for the opinion of this court under section 148 of the same law.

(4) The answer to question (a) is in the negative and, in view of that answer, it is not necessary to consider question (b).

*Case remitted to the Assize Court in accordance with section 148 (3) of Cap. 155.*

Cases referred to :

Case No. 275 of 1953 of the Supreme Court of Greece, reported in "Themis" (1953), volume 64, p. 1088.

Case No. 91 of 1945 of the Supreme Court of Greece, reported in "Themis" (1945), volume 56, p. 253.

**Question of law reserved.**

Question of Law Reserved by the Assize Court of Nicosia (Dervish P.D.C., Ioannides and Mavrommatis D.JJ.) for the opinion of the Supreme Court under the provisions of section 148 of the Criminal Procedure Law, Cap. 155

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under an objection taken by counsel for the defence as to the jurisdiction of the Court to try the case at the commencement of a trial for premeditated murder and before the three accused were asked to plead.

*L. N. Clerides*, with *L. Demetriades*, for the applicants.

*Cr. G. Tornaritis*, Attorney-General of the Republic, for the respondent.

ZEKIA, P. : The judgment of this Court will be delivered by Mr. Justice Josephides.

JOSEPHIDES, J. : This is a question of law reserved by the Assize Court of Nicosia for the opinion of this Court, under the provisions of section 148 of the Criminal Procedure Law, Cap. 155.

In this case the three applicants were accused before the Assize Court of premeditated murder and, before they were asked to plead, an objection was taken by counsel for the defence as to the jurisdiction of the Court to try the case. The objection was based on section 115 of the Military Criminal Code and Procedure, Law 40 of 1964. That section reads as follows :

«115. Έν ἀμφισβητήσῃ τῆς ἀρμοδιότητος μεταξύ τοῦ στρατιωτικοῦ δικαστηρίου ἢ τῶν στρατιωτικῶν δικαστικῶν ἀρχῶν καὶ τῶν κοινῶν ποινικῶν δικαστηρίων ἢ δικαστικῶν ἀρχῶν τὴν ἀρμοδιότητα κανονίζει τὸ Ἄνωτάτου Δικαστήριον.»

It was submitted on behalf of the accused before the Assize Court, and today before this Court, that the wording of section 115 makes it mandatory upon the trial Court to refer the question of jurisdiction to the Supreme Court when the question is raised on behalf of the accused that the Assize Court has no jurisdiction. On behalf of the Prosecution it was contended that the person objecting to the jurisdiction had at least to make out a *prima facie* case before the trial Court dealing with the case referred the matter to the Supreme Court.

The question as reserved for the opinion of this Court was in the alternative : “ (a) Does section 115 of Law 40 of 1964 on its true construction, upon objection being taken under it, make it mandatory to refer the case to the Supreme Court without examining the issue raised and if so in which cases, or (b) Is section 115 of Law 40 of 1964 capable of any other interpretation ? ”

Having heard counsel for the applicants and the learned Attorney-General of the Republic today we are of the view

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— that the wording of section 115 makes it abundantly clear that it is not mandatory for the trial Court to refer the question of jurisdiction to the Supreme Court upon the raising of such question before it. A correct rendering into English of section 115 would be as follows :

“ 115. In case of *contest of jurisdiction* between the court-martial or the military judicial authorities and the ordinary criminal courts or judicial authorities the jurisdiction is decided (regulated) by the Supreme Court.”

The same expression *i.e.* “ contest ” of jurisdiction, appears also in the proviso to paragraph 1 of Article 139 of the Constitution. Our section 115 is modelled on the provisions of section 267 of the Greek Military Code which has been interpreted by the “ Arios Pagos ” (Supreme Court) in Greece in Case No. 275/1953, reported in “ Themis ” (1953), volume 64, page 1088.

For a contest as to jurisdiction to arise under section 115 there must exist a dispute between two different courts, *i.e.* between the court-martial and an ordinary criminal court, exercising jurisdiction in respect of the same subject-matter where there is a pending case before each of these courts (cf. also “ Arios Pagos ” Case No. 91/1945, reported in “ Themis ” (1945) volume 56, page 253). Consequently, a person charged before an ordinary criminal court, in this case the Assize Court, cannot avail himself of the provisions of section 115, which provides for the regulation of the jurisdiction in case of contest of jurisdiction between two courts, *i.e.* an ordinary criminal court and the court-martial, where there is no other case pending against him before the court-martial.

In the present case the Assize Court had a duty to consider and decide the plea of “ no jurisdiction ” under the provisions of section 69 (1) (a) of the Criminal Procedure Law, Cap. 155, and should not have reserved the question for the opinion of this court under section 148 of the same law.

For these reasons the answer to question (a) is in the negative and, in view of that answer, it is not necessary to consider question (b).

The case is accordingly remitted to the Assize Court with this opinion upon the question reserved.

*Case remitted back to the  
Assize Court in accordance  
with section 148 (3) of Cap. 155.*