

1980 August 5

[TRIANTAFYLIDIS, P.]

IN THE MATTER OF AN APPLICATION BY THEODOSSIS
MALIKIDES AND OTHERS FOR LEAVE TO APPLY FOR
ORDERS OF CERTIORARI AND MANDAMUS.

(Application No. 28/80).

IN THE MATTER OF AN APPLICATION BY ANDREAS
AZINAS FOR LEAVE TO APPLY FOR ORDERS OF
CERTIORARI AND PROHIBITION.

(Application No. 29/80).

5 *Practice—Prerogative writs—Applications for leave to apply for
orders of certiorari, mandamus and prohibition—Applicants
advancing arguments, without objection from respondent, on
matters not covered by the Statements filed in relation to the
applications—Reopening of hearing of applications in order to
afford applicants opportunity to elect whether not to rely on such
matters or to seek to amend accordingly the said Statements.*

10 Following the joint hearing of the above two interrelated
applications for leave to apply for orders of certiorari, mandamus
and prohibition the Court reserved its judgment; and in consi-
dering whether or not to grant the applied for leave it noticed
that certain matters, which have been raised and argued before
it, did not come within the ambits of the Statements which were,
15 respectively, filed by the applicants in relation to their applica-
tions.

20 *Held*, that no ground may be relied on or relief sought which
is not set out in the Statement in relation to an application for
leave to apply for a prerogative order; that as in respect of the
matters, which are not covered by the Statements which were
filed, respectively, in the two applications now before the Court,
there have already been advanced, without any objection by
counsel appearing for the Attorney-General, arguments by
counsel appearing for all the applicants the proper course for
this Court is not to discard such matters by not taking them into
25 account as relevant to the leave applied for by the applicants,
but to reopen the hearing of these two applications in order

to afford to counsel for the applicants an opportunity to elect whether not to rely any longer on them or to seek to amend accordingly the Statement in each application; and, that accordingly, the further hearing of these two applications, and of any motion for the amendment of the Statement in either of, or both, the present applications is fixed at 10 a.m. on August 20, 1980. 5

Order accordingly.

Applications.

Applications for leave to apply for orders of certiorari, mandamus and prohibition in connection with proceedings pending against the applicants before the District Court of Nicosia in criminal case No. 10346/80. 10

E. Efstathiou with S. Mamantopoulos, for the applicants in application No. 28/80. 15

L. N. Clerides with St. Charalambous and C. Clerides, for the applicant in application No. 29/80.

S. Nicolaidis, Senior Counsel of the Republic, for the Attorney-General of the Republic.

TRIANTAFYLIDIS P. read the following decision. I have decided to reopen the joint hearing of these two inter-related applications for leave to apply for orders of certiorari, mandamus and prohibition in relation to the proceedings in criminal case No. 10346/80 before the District Court of Nicosia; my reasons for adopting this course are the following: 20 25

In considering whether or not to grant the applied for leave it has come to my notice that certain matters which have been raised and argued before me do not come within the ambits of the Statements which were, respectively, filed by the applicants in relation to their present applications. 30

As it is stated in Atkin's Court Forms, 2nd ed. (1972), vol. 14, p. 51, no ground may be relied on or relief sought which is not set out in the Statement filed in relation to an application for leave to apply for a prerogative order.

As regards application No. 28/80 what does not appear to be covered by the Statement is the contention that, in effect, the trial Judge in the aforesaid criminal case did not decide on an 35

application of counsel for the applicants—(who are accused Nos. 2–6)—that there should be reserved for the opinion of the Supreme Court, under section 148 of the Criminal Procedure Law, Cap. 155, two questions of law, and that, consequently,
5 leave should be granted to the applicants to apply in this respect for an order of mandamus directing the trial Judge to decide on their said application.

As regards application No. 29/80 there seem to be outside the ambit of the Statement the matters which were raised by means
10 of two supplementary affidavits of the applicant dated July 21, 1980, and July 28, 1980, namely the matter of a hostile to him letter which was published in the newspaper “Kypros”, on May 19, 1980, by Mrs. Anna Artemides, who is the wife of the trial Judge in the aforementioned criminal case, and, also, the conten-
15 tion of the applicant that the further trial of such criminal case should, in view of the nature of the charges, be postponed until after the completion of the task of a Commission of Inquiry which was appointed by the Council of Ministers, under the Commissions of Inquiry Law, Cap. 44, in relation to certain
20 matters concerning Co-operative Societies in Cyprus.

In relation to the above contention for the postponement of the trial the procedural problem arising in the present proceedings before me is that it is not relied on at all in the Statement as a
25 ground entitling the applicant to apply for either an order of certiorari or an order of prohibition.

Regarding the letter of Mrs. Artemides it has been argued by counsel for the applicant that there arises the issue that the trial of the criminal case in question by her husband, as a District Judge, offends against the principle that justice must not only
30 be done, but must, also, be seen to be done, even though it is indisputable that his integrity is beyond any doubt; however, in the Statement the issue of the application of the said principle has not been raised in relation to the letter of the wife of the learned trial Judge but, only, in relation to the conduct by him
35 of the criminal trial concerned, at which the applicant is accused No. 1.

I have decided that, as in respect of the aforementioned matters, which are not covered by the Statements which were filed, respectively, in the two applications now before me, there

have already been advanced, without any objection by counsel appearing for the Attorney-General, arguments by counsel appearing for all the applicants, the proper course is not to discard such matters by not taking them into account as relevant to the leave applied for by the applicants, but to reopen the hearing of these two applications in order to afford to counsel for the applicants an opportunity to elect whether not to rely any longer on them or to seek to amend accordingly the Statement in each application (see, in this respect, Order 53, rule 4, of the Rules of the Supreme Court in England, in the Supreme Court Practice, 1976, vol. 1, p. 802, and, also, Atkin's, *supra*, p. 56).

Counsel for the applicants may, if they so elect, take within five days from today all necessary steps for amending the Statement in each one of the present applications.

Counsel for the Attorney-General is free, if he so wishes, to oppose in writing any amendment within five days thereafter.

In dealing, particularly, with the question of the amendment of the Statement in application No. 29/80 in order to bring within its ambit the aforesaid letter of Mrs. Artemides, I will expect counsel to address me, too, in relation to the issue of waiver and acquiescence (see Halsbury's Laws of England, 4th ed., vol. 1, p. 87, para. 71) inasmuch as, though the said letter was within the knowledge of the applicant, no issue was raised in respect of it at the commencement of the trial of the criminal case in question.

The further hearing of these two applications, and of any motion for the amendment of the Statement in either of, or both, the present applications is fixed at 10 a.m. on August 20, 1980.

In concluding I should state that in case—if an occasion to do so arises—counsel for the applicants raise before the trial Judge any of, or all, the aforementioned matters that are not as yet within the ambit of the Statement in each one of their applications such a course would not be in any way incompatible with the present proceedings before me.

Order accordingly.