

[HALLINAN, C.J. and ZEKIA, J.]

(January 20, 1956)

1. IOANNIS DEMETRI MICHAEL of Kyrenia,
 2. CHRISTOFOROS DEMETRI AMAXARIS of Kyrenia,
- Appellants,*

v.

THE POLICE, *Respondents.*

(*Criminal Appeal No. 2024.*)

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IOANNIS
DEMETRI
MICHAEL
& ANOTHER

v.
THE POLICE

*Criminal Law—Charges under Criminal Code, section 55—
Duplicity.*

The appellants were charged under the Criminal Code, section 55, of advocating or encouraging the doing of any acts declared to be unlawful in section 60.

Upon appeal,

Held: The charge was not bad for duplicity. The fact that more than one act is declared unlawful under section 60 does not make more than one offence chargeable under section 55.

Appeal dismissed.

Appeal by accused from the judgment of the Special Court of Kyrenia (Case No. 1/55).

S. Christis with *D. G. Demetriades* for the appellants.

M. P. L. D. Griffith-Jones, Crown Counsel, for the respondents.

The facts sufficiently appear in the judgment of this Court which was delivered by:

HALLINAN, C.J.: In this case the appellants were charged under section 55 of the Criminal Code with advocating or encouraging the doing of any acts declared to be unlawful in section 60. The particulars of the offence contained an allegation that the appellants had advocated or encouraged the overthrow of the constitution of the Colony by revolution or sabotage, the overthrow by force or violence of the established Government of the Colony, and the destruction or injury of property of the Colony. They had, on the 21st November, 1955, distributed Eoka leaflets, and undoubtedly these leaflets did advocate or encourage the overthrow of the constitution of the Colony by revolution and the overthrow by force of the Government of the Colony.

The only ground of appeal which we think it necessary to consider is that this charge was bad for duplicity. Now, the grounds on which convictions are set aside as being double is that the appellants may have been prejudiced in making their defence because they did not

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know the charge which they had to meet; and secondly because, after the conviction and at a later date, if they should wish to plead the conviction as a matter of *autrefois* acquit or *autrefois* convict, the record of their conviction would be ambiguous.

First it was submitted that this charge was double because the accused were charged with both advocating and encouraging the doing of the unlawful acts. We may say at once that we do not consider that the words "advocate or encourage" constitute two different, separate offences.

The second submission concerning the charge being double is that not merely one unlawful act under section 60, but three unlawful acts, are charged. The short answer to that submission is that the offence under section 55 only has two elements, one advocating or encouraging; and the other, that the act so advocated was an act declared unlawful by section 60.

Now, only one act is charged in this case, the distribution of pamphlets on a certain day. It is not suggested that pamphlets were distributed at different times. It is true that this act of distributing Eoka leaflets might have been with the intention of overthrowing the constitution or with the intention of overthrowing by force the Government or with the intention of the destruction of property of the Colony. The exact nature of an unlawful act was in this case a matter of evidence and not an essential element in the offence. The offence with which the appellants have been convicted is advocating or encouraging the doing of an act unlawful under section 60, and that this is the sole matter of record. The precise part of section 60 under which this act falls is a matter of evidence, not of record, and does not form part of the conviction. The fact that more than one act is declared unlawful under section 60 does not make more than one offence chargeable under section 55.

Hence the provisions of section 38 paragraph (d) of the Criminal Procedure Law (Cap. 14) (which reproduces in substance rule 5(1) of the Indictments Act 1915, Schedule 1) clearly apply.

For these reasons we are unable to accept the submission that the charge in this case was double, and the appeal must be dismissed.