

THE ATTORNEY-GENERAL OF THE REPUBLIC,

Applicant,

v.

MICHALAKIS CHRISTOU ROSSIDES AND OTHERS,

Respondents.

ATTORNEY-
GENERAL
OF THE
REPUBLIC
v.
MICHALAKIS
CHRISTOU
ROSSIDES
AND OTHERS

(Criminal Application No. 3/70).

Criminal Procedure—Trial of criminal cases—Transfer of—Preliminary inquiry in a criminal case of the District Court of Limassol—Application by the Attorney-General for transfer to the District Court of Nicosia—Principles applicable—Section 174 (1) (a) and (e) of the Criminal Procedure Law, Cap. 155—“Fair and impartial” in (a) supra—Application granted, subject to payment of all consequential costs viz. costs of defence witnesses, etc. out of public funds—See further infra.

Transfer of trial of criminal cases from one Court to another—Preliminary inquiry—Order for change of place of preliminary inquiry—Assize Court to which accused should be committed for trial on completion of preliminary inquiry—In the present case such Assize Court should be the Nicosia Assize Court—Section 93 (i) of the Criminal Procedure Law, Cap. 155, to be read subject to the provisions of section 174 of the same statute (supra) and the order of the Supreme Court for transfer made thereunder.

Words and Phrases—“Fair and impartial” in section 174 (1) (a) of the Criminal Procedure Law, Cap. 155—It should be construed to mean “fair and impartial” not only to the accused, but also to the prosecution for the purposes of justice (see The Attorney-General v. Steniotis (1967) 2 C.L.R. 295, at p. 297).

This is an application by the Attorney-General under the provisions of section 174 (1) (a) and (e) of the Criminal Procedure Law, Cap. 155, for an order of this Court transferring to the District Court of Nicosia the preliminary inquiry in Criminal Case No. 8150/70 of the District Court of Limassol, on the ground that, in the circumstances prevailing in Limassol, a fair and impartial inquiry cannot be held before the District Court of Limassol and that such an order is expedient in the ends of justice.

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The facts sufficiently appear in the judgment of the Court granting the application for transfer, subject to payment of all consequential costs such as expenses of defence witnesses, etc. out of public funds.

Cases referred to :

The Attorney-General of the Republic v. Steniotis (1967) 2 C.L.R. 295, at p. 297, *followed*.

Application.

Application by the Attorney-General of the Republic for an order of the Court transferring to the District Court of Nicosia the preliminary inquiry in Criminal Case No. 8150/70 of the District Court of Limassol.

M. Kyprianou, Counsel of the Republic, for the applicant.

G. Pelagias, for respondents No. 1, 2 and 3.

L. Papaphilippou, for respondents No. 4, 9 and 13.

A. Papadopoulos, for respondents No. 6, 12 and 16.

P. Petrides, for respondent No. 17.

All respondents present except No. 7, 9 and 19 who are at the Nicosia General Hospital for treatment.

The remaining respondents appeared in person.

The following judgment was delivered by :—

JOSEPHIDES, J. : This is an application by the Attorney-General of the Republic under the provisions of section 174 (1) (a) and (e) of the Criminal Procedure Law, Cap. 155, for an order of this Court transferring to the District Court of Nicosia the preliminary inquiry in Criminal Case No. 8150/70 of the District Court of Limassol, on the ground that a fair and impartial preliminary inquiry cannot be held before the District Court of Limassol and that such an order is expedient in the ends of justice.

With regard to the expression “fair and impartial”, which occurs in section 174 (1) (a), I have already held that it should be interpreted to mean fair and impartial not only to the accused but also to the prosecution for the purposes of justice : See *The Attorney-General of the Republic v. Christodoulides Steniotis* (1967) 2 C.L.R. 295, at page 297.

The charges against the respondents are very serious ones. The first eleven respondents are charged with office-holding in an unlawful association known as the "Ethnikon Metopon". The remaining ten respondents are charged with being members of such an unlawful association. Four of the respondents are charged with armed robbery of a revolver and explosive substances from the Police Station in Limassol on the night of the 23rd May, 1970 ; and, finally, all the respondents are charged with armed robbery of rifles, pistols, bren-guns, sterling-guns and sten-guns, exceeding 300 in number, grenades, shells and rounds of ammunition exceeding 20,000, etc. from the Police Station in Limassol on the same night.

It was submitted on behalf of the Attorney-General of the Republic that the large quantity of fire-arms and explosive substances, which are the subject matter of the charges, indicate the intention of the respondents to promote the ends of their unlawful association, which are to overthrow the Government of the Republic and to abolish the State, and to resist by armed force any action of the Government against them.

In support of his application the Attorney-General of the Republic has filed an affidavit sworn by Mr. George Haji Loizou, Chief Superintendent of Police and Departmental Commander of the Criminal Investigation Department at Police Headquarters. Mr. Haji Loizou states that, with the exception of the first respondent who resides in Morphou, all the other respondents reside in Limassol where the "Ethnikon Metopon" has, according to police information, the greater number of members, its strong groups and striking force. He further states that according to reliable information other members of this unlawful association, who are still at large in Limassol, will attempt to rescue the respondents ; that the prosecution witnesses will be tampered with and intimidated, and that if the inquiry is held in Limassol conditions of safety for the witnesses cannot be secured in that town ; that if the inquiry is held in Nicosia it will be possible to secure conditions of safety for the attendance of prosecution witnesses and, consequently, their willingness to testify will be greatly facilitated. In fact, it has been stated that prosecution witnesses have been threatened by friends and relatives of the respondents who reside in Limassol.

Mr. Kyprianou, on behalf of the Attorney-General of the Republic, informed the Court that the police in Nicosia can muster 1,300 members of the Force while the members

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of the Police Force in Limassol are only 350. Furthermore, Mr. Kyprianou has referred to two incidents which took place in the District Court of Limassol : The first on the 30th June, 1970, and the second on the 10th July, 1970 when the respondents appeared in Court. It is contended that they conducted themselves in a disorderly manner, that they created a disturbance, that they attempted to escape and that they assaulted members of the Police Force. The respondents, however, denied these accusations and stated that they are not to blame for these incidents. There is a criminal case pending against some of the respondents before the District Court of Limassol in respect of the incidents of the 10th July, 1970.

Finally, it was submitted on behalf of the Attorney-General of the Republic that on account of the large number of the respondents and the inadequacy of cells in Limassol, the respondents will have to be conveyed daily from Limassol to the Central Prison in Nicosia for safe custody and the daily travel to and from Limassol will create a problem for their security.

Mr. Papaphilippou on behalf of respondents No. 4, 9 and 13, while not admitting any blame on behalf of his clients in respect of the above-mentioned incidents, did not oppose the application and conceded that the grounds put before the Court showed that this was a proper case to be transferred to Nicosia.

On the other hand, Mr. Pelagias on behalf of respondents No. 1, 2 and 3 ; Mr. Papadopoulos on behalf of respondents No. 6, 12 and 16 and Mr. Petrides on behalf of respondent No. 17, as well as the other respondents appearing in person, opposed the application. The main grounds of their opposition were that there was no risk of any intimidation of, or tampering with, the witnesses ; that the respondents were not to blame for the incidents referred to earlier ; that the preliminary inquiry, with 114 prosecution witnesses, would take a very long time, with consequential hardship to the respondents ; and that the respondents' families would suffer great expense and hardship in having to travel all the way from Limassol or Paphos to see their relatives in Nicosia. Finally, they asked the Court that, if it was eventually decided to order the transfer of the case to Nicosia, an order should be made directing the payment of the defence costs, and the expenses which will be incurred by their families, to be paid out of public funds.

Perhaps I should state here that I do not think I could make an order directing payment out of public funds of the expenses which may be incurred by relatives in visiting the respondents while in custody. I shall deal with the question of the additional defence costs later in this judgment.

I have given anxious consideration to the submissions made on behalf of the respondents but in the end I have not been persuaded that their grounds of opposition outweigh the weighty grounds put forward on behalf of the Attorney-General of the Republic in support of his application.

I cannot but take a very serious view of the two incidents which took place in the courtroom in Limassol within a space of one week. There were rowdy and unruly scenes in the courtroom which, within my knowledge, is something unprecedented in our courts in Cyprus within, at least, the past 35 years. Even assuming that the respondents were not to blame for these serious incidents, and that members of the public or others were responsible for these (as to which I express no opinion as there is a criminal case pending), it would appear to me that such incidents would most likely interfere with the fair and impartial holding of a preliminary inquiry or trial in Limassol.

Other equally weighty factors are that (a) there would be more safety for, and less likelihood of tampering with, the prosecution witnesses in Nicosia; (b) that the risk of escape of the 21 respondents on their way from the prison in Nicosia to Court and back daily will be much less if the Court proceedings were held in Nicosia and not in Limassol (a trip of 108 miles); and (c) that a calmer atmosphere will prevail in Nicosia which will be conducive to the ends of justice.

Finally, there is one point which was raised by Mr. Papaphilippou on behalf of his clients, and on which I expressed an opinion in the course of the argument. It is this. Once this Court orders that the preliminary inquiry be held in Nicosia then, as a matter of construction, section 93 (i) of the Criminal Procedure Law, Cap. 155, shall be read subject to the provisions of section 174 of the same statute and the order of this Court made thereunder, that is to say, if, at the close of the case for the prosecution at the preliminary inquiry, the committing Judge considers that, on the evidence as it stands, there are sufficient grounds for committing the accused (respondents) for trial, the

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Judge shall commit them for trial by the Assize Court of Nicosia, and not by that of Limassol ; and no fresh order by this Court is necessary to have the Assize trial transferred to Nicosia. The reasons for this are obvious— (a) that this Court cannot, at this stage, order the transfer of a non-existent Assize trial from one Court to another ; and (b) if it is considered expedient for the ends of justice to order the holding of the preliminary inquiry in Nicosia, *afortiori* the Assize trial should not be held in Limassol but in Nicosia.

In the result, considering all the circumstances of this case, I am satisfied that a fair and impartial preliminary inquiry cannot be held in the District Court of Limassol and that it is expedient for the ends of justice to have such preliminary inquiry transferred to Nicosia. I accordingly *ORDER* as follows :—

(1) The preliminary inquiry in Criminal Case No. 8150/70 in the District Court of Limassol on charges of office holding in an unlawful association, membership of an unlawful association and armed robbery, in which Michalakis Christou Rossides and 20 other persons *are* the accused, shall be held before the District Court of Nicosia instead of the District Court of Limassol.

(2) This order is subject to the term that all costs resulting from the transfer of the preliminary inquiry and, eventually, the trial before the Assize Court, that is, costs of the defence witnesses, etc., shall be paid out of public funds.

As the respondents (accused) or most of them have been in custody since the 24th May, 1970, it is highly desirable that the preliminary inquiry be held as early as possible, and it is hoped that the President of the District Court will give the necessary directions in the matter.

As regards the question of legal aid to the respondents (accused), which has been raised before me by their counsel, an early application should be filed in the District Court for the consideration of this matter.

Application granted.