

1982 March 30

[TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, SAVVIDES,
STYLIANIDES, PIKIS, JJ.]

IN THE MATTER OF AN APPLICATION BY THE ATTORNEY-
GENERAL OF THE REPUBLIC FOR AN ORDER OF EXTRA-
DITION UNDER THE FUGITIVE OFFENDERS LAW, 1970,

AND

IN THE MATTER OF KHAFFAFE SHARIF ZAMIN, OF IRAN,
Respondent.

(*Question of Law Reserved No. 189*).

*Criminal Procedure—Question of Law Reserved—Section 148(1) of
the Criminal Procedure Law, Cap. 155—Desirable for trial Judge
to record its views on the particular question of law—Need that
such question be phrased precisely and clearly—Extradition pro-
ceedings under the Extradition of Fugitive Offenders Law, 1970 5
(Law 97/70)—Not an exercise of “criminal jurisdiction” in the
sense of the above section 148(1)—No question of Law can be
reserved thereunder in such proceedings.*

*Extradition proceedings—They are not “criminal proceedings” in the
sense of section 148(1) of the Criminal Procedure Law, Cap. 155. 10*

The sole issue in this case was whether in extradition proceed-
ings under the Extradition of Fugitive Offenders Law, 1970 (Law
97/70) a question of law may be reserved under section 148 of
the Criminal Procedure Law, Cap. 155.

Held, that bearing in mind the reference in section 148(1) to 15
the term “trial”, in conjunction with the provisions of subsection
(3) of section 148, this Court is of the view that the proceedings
in which the two questions of law were reserved, that is the
extradition proceedings concerned, were not an exercise of
“criminal jurisdiction” in the sense of section 148(1) (see, also, 20
the definition of “criminal proceedings” in section 2 of Cap. 155,
the definition of “criminal proceedings” and “civil proceedings”
in section 2 of the Courts of Justice Law, 1960 (Law 14/60)); and

that, therefore, the questions of law which were reserved do not come within the ambit of section 148(1) of Cap. 155 and cannot be dealt with under its provisions.

5 *Held, further, that the reference to a preliminary inquiry in the context of subsection (2) of section 9 of Law 97/70 does not render the extradition proceedings a preliminary inquiry as such. It merely prescribes the procedure to be followed, but in no way purports to define the character of such proceedings.*

Observations:

10 (1) It is desirable and a sound practice for the trial Court to record its views on the particular question of law before the Supreme Court is invited to express its opinion on it.

(2) Even when a question of law is reserved, under section 148 as it stands now, on the application of the Attorney-General,
15 it is necessary, as a matter of proper practice, for the trial Court to ensure that counsel appearing for the Attorney-General phrases such question in a manner making it possible to emerge from it precisely and clearly the issue of law on which it is expected that the Supreme Court will give its opinion.

20 Cases referred to:

Republic v. Sampson (1977) 2 C.L.R. 1 at p. 72.

Question of Law Reserved.

Question of law reserved by the District Court of Limassol (Korfiotis, D.J.) for the opinion of the Supreme Court under
25 section 148 of the Criminal Procedure Law, Cap. 155 relative to a ruling of the said District Court made in the course of the hearing of Criminal Application No. 1/82 filed by the Attorney-General of the Republic, for an extradition order under section 7 of the Extradition of Fugitive Offenders Law, 1970 (Law No.
30 97/70), against the respondent.

A. M. Angelides, Senior Counsel of the Republic, for the applicant.

A. Myrianthis with *G. Cacoyiannis* and *J. Phaedonos*, for the respondent.

35 TRIANTAFYLIDIS P. read the following judgment of the Court. On 22nd February 1982 a judge of the District Court of Limassol,

while dealing with an application by the Attorney-General of the Republic for an extradition order under section 7 of the Extradition of Fugitive Offenders Law, 1970 (Law 97/70), reserved, on the application of counsel appearing for the Attorney-General, two questions of law for the opinion of the Supreme Court, under section 148 of the Criminal Procedure Law, Cap. 155. 5

It appears that serious issues are, indeed, involved in the questions reserved, especially as regards the application of section 88 of Cap. 155 in conjunction with section 30(5) of the Narcotic Drugs and Psychotropic Substances Law, 1977 (Law 29/77). 10

Before, however, proceeding any further we would like to point out the following:

First, that the application to reserve the two questions of law was made just when the trial Judge was about to give his ruling in relation to the legal issues involved; and we would like to draw attention, in this respect, to the very pertinent, and in our view correct, observations of our brother Mr. Justice A. Loizou in *The Republic v. Sampson*, (1977) 2 C.L.R. 1, 72, to the effect that it is desirable and a sound practice for the trial Court to record its views on the particular question of law before the Supreme Court is invited to express its opinion on it. 15 20

Secondly, that even when a question of law is reserved, under section 148 as it stands now, on the application of the Attorney-General, it is necessary, as a matter of proper practice, for the trial Court to ensure that counsel appearing for the Attorney-General phrases such question in a manner making it possible to emerge from it precisely and clearly the issue of law on which it is expected that the Supreme Court will give its opinion. 25 30

Next, prior to dealing with the substance of the matter, we have had to examine first the preliminary issue of whether the procedure of applying for questions of law to be reserved under section 148 of Cap. 155 could have been resorted to on this occasion: 35

The said section 148 reads as follows:

“148.(1) Any Court exercising criminal jurisdiction may, and upon application by the Attorney-General shall, at

any stage of the proceedings, reserve a question of law arising during the trial of any person for the opinion of the Supreme Court.

5 (2) In every such case the President of the Assize Court or the trial Judge, as the case may be, shall make a record of the question reserved with the circumstances upon which the same has arisen and shall transmit a copy thereof to the Chief Registrar.

10 (3) The Supreme Court shall consider and determine the question reserved and may -

(a) if the Court has convicted the accused -

(i) confirm the conviction;

(ii) quash the conviction, in which case the accused shall be acquitted;

15 (iii) direct that the judgment of the Court shall be set aside and that, instead thereof, judgment shall be given by the Court as ought to have been given at the trial;

20 (b) if the Court has not delivered its judgment, remit the case to it with the opinion of the Supreme Court upon the question reserved."

Bearing in mind the reference in section 148(1) to the term "trial", in conjunction with the provisions of subsection (3) of section 148, we are of the view that the proceedings in which the two questions of law were reserved, that is the extradition proceedings concerned, were not an exercise of "criminal jurisdiction" in the sense of section 148(1); and this view is strengthened when we examine the definition of "criminal proceedings" in section 2 of Cap. 155, which reads as follows:

30 "criminal proceedings' and cognate expressions mean any proceedings instituted before any Court against any person to obtain punishment of such person for any offence against any enactment and includes a preliminary inquiry;"

35 Our above opinion is further reinforced by the definitions of "criminal proceeding" and "civil proceeding" in section 2 of

the Courts of Justice Law, 1960 (Law 14/60), which read as follows:

“criminal proceeding” means any proceeding instituted before any court against any person to obtain punishment of such person for any offence against any Law or public instrument;

(“ποινική διαδικασία” σημαίνει οιαδήποτε διαδικασία εισαγόμενη ενώπιον οίουδήποτε δικαστηρίου καθ’ οίουδήποτε προσώπου προς επίτευξιν τιμωρίας αυτού δι’ οίουδήποτε αδίκημα διὰ παράβασιν οίουδήποτε νόμου ή δευτερογενούς νομοθεσίας:”)

“civil proceeding” includes any proceeding other than criminal proceeding;”

(“πολιτική διαδικασία” περιλαμβάνει οιαδήποτε διαδικασία άλλη ή ποινικήν διαδικασία.”).

It is correct that by section 9(2) of Law 97/70 it is provided as follows:

“9. _____

(2). Καθ’ όσον άφορᾷ εις τήν διεξαγομένην δυνάμει του παρόντος άρθρου διαδικασία, τὸ επιληφθέν τῆς έκδόσεως Δικαστήριον κέκτηται, κατά τὸ πλησιέστερον δυνατόν, τήν αὐτήν διαδικασία καὶ τὰς αὐτὰς ἐξουσίας ὡς καὶ ὁ διεξάγων προανάκρισιν δικαστής, περιλαμβανομένης καὶ τῆς ἐξουσίας πρὸς προφυλάκισιν ή απόλυσιν ἐπὶ ἐγγυήσει του εις ὃ άφορᾷ ή έκδοσις προσώπου.

(“9. _____

“(2) For the purposes of proceedings under this section a Court of committal shall have the like jurisdiction and powers, as nearly as may be, including power to remand in custody or on bail, as a Judge holding a preliminary enquiry.

_____”).

In our view, however, the reference to a preliminary inquiry in the context of subsection (2), above, does not render the

extradition proceedings a preliminary inquiry as such. It merely prescribes the procedure to be followed, but in no way purports to define the character of such proceedings. The fact that extradition proceedings are, in certain respects, akin to criminal proceedings should not lead us astray for, as already found, they are outside the ambit of the exercise of "criminal jurisdiction" within the context of section 148(1) of Cap. 155; and this view is confirmed by the fact that there is no provision under section 10 of Law 97/70 for an appeal to this Court, under the provisions of Cap. 155, but only a provision for judicial review by way of an application for habeas corpus.

For all the foregoing reasons we find that the questions of law which were reserved do not come within the ambit of section 148(1) of Cap. 155 and, therefore, they cannot be dealt with under its provisions; so, this case is remitted to the trial Court for further proceedings without this Court having had to answer such questions of law.

Order accordingly